A Jurisprudence of the BANGLADESH AIR FORCE

Between Command and Conscience

S M Nazmuz Sakib

A Jurisprudence of the Bangladesh Air Force: Between Command and Conscience

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A Jurisprudence of the Bangladesh Air Force: Between Command and Conscience
A Comprehensive Handbook of Bangladesh Air Force Law, Discipline, and Institutional Jurisprudence

Author
S M Nazmuz Sakib

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Preface

This is not a book about punishment scales. It is not a manual for memorising the elements of desertion or the procedural requirements for convening a general court martial, though those subjects are addressed within these pages with the thoroughness they deserve. This handbook is something else entirely. It is an encounter with one of the most philosophically rich, historically layered, and politically charged domains of legal knowledge available to any scholar or practitioner within the South Asian legal tradition.

The law of the Bangladesh Air Force sits at an unusual and provocative intersection. It draws from constitutional jurisprudence, criminal law theory, military ethics, international humanitarian law, the sociology of institutions, the philosophy of obedience, the theory of sovereignty, and the lived history of a nation born in fire and blood. To study it properly, one must bring to the table not just legal literacy but philosophical curiosity, historical sensitivity, and a willingness to confront uncomfortable truths about power, discipline, and justice. This handbook demands that of its reader.

Why does such a demanding approach matter? Because military law is not merely a technical system for maintaining order within an institution. It is the place where the state's most profound claims on the individual, the demand that one risk one's life, that one subordinate one's judgment to command authority, that one accept restrictions on liberty that would be intolerable in civilian life, are translated into legal rules and institutional practices. When those rules and practices are just, when they respect the dignity of the persons they govern, and when they are administered fairly, they legitimate the extraordinary demands that military service places on those who serve. When they are unjust, arbitrary, or administered without regard for the rights of the accused, they degrade the institution and betray the constitutional order that the air force exists to defend.

This handbook is written for several audiences simultaneously. It is written for officers of the Bangladesh Air Force who must understand the legal framework within which they exercise command authority and within which they may one day find themselves subject to discipline. It is written for judge advocates serving the service, whose daily work of legal advice, prosecution, defence, and adjudication is the practical expression of the rule of law within the institution. It is written for legal scholars engaged with military jurisprudence, who will find in these pages both a comprehensive analysis of a neglected legal system and a contribution to the comparative study of military law in democratic societies. It is written for civilian lawyers who may encounter the boundaries where military and civilian jurisdictions meet, in cases involving service members charged with civil offences, in constitutional challenges to military decisions, and in the representation of service members and their families. And it is written for anyone who believes that understanding the law of an institution is inseparable from understanding the soul of that institution.

The timing of this handbook is no accident. Bangladesh is living through a constitutional transformation of the first order. The mass uprising of July and August 2024 brought down a government that had been in power for fifteen years and inaugurated an interim administration committed to comprehensive constitutional reform. The Constitution Reform Commission submitted its recommendations in January 2025. The July National Charter, signed by the

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National Consensus Commission and twenty-four political parties in October 2025, contains over eighty reform proposals, nearly half of them constitutional in character. A referendum on these reforms is scheduled for February 2026, to be held on the same day as the next general elections.

The implications of this constitutional transformation for Bangladesh Air Force law are profound and far reaching. The proposed justiciability of socioeconomic rights would transform service conditions entitlements from matters of administrative discretion into constitutional rights enforceable in court. The proposed strengthening of parliamentary oversight of the armed forces would create new mechanisms of democratic accountability that the existing framework does not provide. The proposed constitutional entrenchment of civilian control of the military would address the deepest structural vulnerability of Bangladesh's constitutional order, the vulnerability that enabled periods of military governance to interrupt the democratic development of the country. This handbook engages with these constitutional developments throughout, but especially in Part Seven and Part Ten, where the reform agenda is examined in detail.

The pages that follow treat their reader as an intellectual equal, capable of engaging with complex ideas, of holding contradictions in mind, and of thinking critically about the systems within which they operate. This is not a book that tells the reader what to think. It is a book that provides the intellectual tools, the historical knowledge, the comparative perspective, and the jurisprudential framework necessary for the reader to think for themselves about the law that governs one of Bangladesh's most important national institutions.

The handbook is organised in ten Parts. Part One lays the philosophical and historical foundations, tracing the origins of military law from the Roman legions through the British colonial inheritance to the founding of the Bangladesh Air Force in the liberation war of 1971. Part Two examines the specific offence provisions of the Air Force Act of 1953 with analytical depth and comparative awareness. Part Three addresses the structure and procedure of courts martial and summary proceedings, the machinery through which military justice is administered. Part Four explores the rights of accused persons in Bangladesh Air Force law, the constitutional and procedural protections that define the limits of military authority over the individual. Part Five provides a comprehensive analysis of the specific offences created by the Air Force Act, each examined with attention to its elements, its philosophical foundations, and its reform requirements. Part Six addresses the law of military operations, including the law of armed conflict as it applies to air operations, the legal framework for UN peacekeeping, and the emerging domains of cyber, space, and autonomous warfare. Part Seven examines the constitutional dimensions of Bangladesh Air Force law, the fundamental rights of service members, the judicial review of military decisions, and the constitutional reform imperative. Part Eight addresses the law of military discipline and administrative action, the commanding officer's disciplinary authority, summary proceedings, and the administrative mechanisms for career management and separation from service. Part Nine examines the law of service conditions and personnel administration, including pay, allowances, accommodation, medical care, pension, and the legal framework for service injuries and deaths. Part Ten looks to the future, addressing the emerging challenges of the next generation of air power, the comprehensive reform vision for Bangladesh Air Force law, and the jurisprudence of a transformed institution.

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Each Part builds on the foundation established by the Parts before it. The reader who begins at Part One and proceeds sequentially will develop an understanding of Bangladesh Air Force law that is both deep and comprehensive. The reader who comes to the handbook with a specific interest, whether in court martial procedure, service conditions law, or the constitutional dimensions of military authority, will find the relevant material organised and indexed for convenient access. But the handbook is designed to be read as a whole, because the insights developed in each Part illuminate and reinforce the insights developed in the others.

The intellectual honesty that serious legal scholarship demands requires acknowledging certain limitations of this work. The handbook is based primarily on the public sources of Bangladesh Air Force law: the Air Force Act of 1953, the regulations made thereunder, the Constitution of Bangladesh, the relevant international treaties to which Bangladesh is a party, the published comparative jurisprudence of military justice systems in other democratic states, and the scholarly literature on military law, constitutional law, and international humanitarian law. Some dimensions of Bangladesh Air Force practice, including the detailed procedures of courts martial, the content of classified rules of engagement, and the internal deliberative processes of the Judge Advocate General's office, are not matters of public record and cannot be analysed with the same degree of specificity as the statutory framework. The handbook draws on such information as is publicly available and on the general principles of military law that apply across jurisdictions, but the reader should be aware that the gap between the formal law as it appears in the statute book and the lived reality of military legal practice is not fully captured in these pages.

This handbook is also, necessarily, a product of its time. The constitutional reform process that began after July 2024 is ongoing. The referendum scheduled for February 2026 has not yet occurred. The defence procurement decisions that will shape the Bangladesh Air Force for a generation, the Eurofighter Typhoon LOI, the Japan defence technology agreement, the prospective Boeing deal, are in various stages of negotiation and implementation. The political landscape of Bangladesh is fluid, and the institutional relationships between the civilian government and the armed forces are evolving. The analysis in this handbook is current as of April 2026, but the reader should be aware that the legal and political context within which Bangladesh Air Force law operates may change in ways that this handbook cannot anticipate.

The author of this handbook writes from a position of deep respect for the Bangladesh Air Force and for the men and women who serve in it. The legal analysis presented in these pages is offered in the conviction that the most powerful form of respect for an institution is to take its governing law seriously, to examine it honestly, to identify its strengths and its weaknesses, and to advocate for its improvement. A Bangladesh Air Force that operates within a legal framework that is constitutionally grounded, procedurally fair, and respectful of the rights and dignity of its personnel is a Bangladesh Air Force that is worthy of the trust of the nation it serves. This handbook is offered as a contribution to the realisation of that aspiration.

S M Nazmuz Sakib

April 2026

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PART ONE

FOUNDATIONS, PHILOSOPHY, AND HISTORICAL ORIGINS OF BANGLADESH AIR FORCE LAW

PREFATORY NOTE TO PART ONE

The study of Bangladesh Air Force law is not merely an exercise in reading statutes and memorising punishment scales. It is an encounter with one of the most philosophically rich, historically layered, and politically charged domains of legal knowledge available to any scholar or practitioner within the South Asian legal tradition. Air Force law in Bangladesh sits at the intersection of constitutional jurisprudence, criminal law theory, military ethics, international humanitarian law, the sociology of institutions, the philosophy of obedience, the theory of sovereignty, and the lived history of a nation born in fire and blood. To study it properly, one must bring to the table not just legal literacy, but philosophical curiosity, historical sensitivity, and a willingness to confront uncomfortable truths about power, discipline, and justice.

This handbook is written for officers of the Bangladesh Air Force, for judge advocates serving the service, for legal scholars engaged with military jurisprudence, for civilian lawyers who may encounter the boundaries where military and civilian jurisdictions meet, and for anyone who believes that understanding the law of an institution is inseparable from understanding the soul of that institution. The pages that follow treat their reader as an intellectual equal, capable of engaging with complex ideas, of holding contradictions in mind, and of thinking critically about the systems within which they operate.

This first part covers what may be called the bedrock of Bangladesh Air Force law. It traces the philosophical origins of military law as a distinct form of jurisprudence, examines the colonial and post-colonial history from which the Bangladesh Air Force Act of 1953 emerged, analyses the constitutional architecture within which air force law functions, explores the theoretical frameworks that scholars have used to understand military justice systems, and engages with the political dimensions of military law in a country that has experienced both democratic governance and periods of military administration. It discusses controversies, unresolved tensions, and emerging challenges. It does so with the conviction that honest intellectual engagement with difficult questions is itself a form of service to the institution.

CHAPTER ONE: THE NATURE AND PURPOSE OF AIR FORCE LAW: AN INTRODUCTION TO THE DOMAIN

1.1 What Is Air Force Law? Preliminary Definitions and Conceptual Boundaries

Air Force law, taken in its broadest sense, is the body of legal rules, norms, principles, doctrines, and practices that govern the organisation, discipline, conduct, rights, and obligations of

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personnel serving in an air force. In the context of Bangladesh, air force law is principally embodied in the Air Force Act of 1953, the rules made thereunder, the Air Force Regulations, Standing Orders, service instructions, and the rich body of precedents and practices that have accumulated over more than seven decades of the force's existence. It also draws from the Constitution of the People's Republic of Bangladesh, the Penal Code, the Code of Criminal Procedure, international law, and the accumulated wisdom of service usage and custom.

The term "air force law," as defined in Section 4(vi) of the Air Force Act of 1953, means the law enacted by the Act itself and the rules made thereunder, and explicitly includes "the usages of the service." This definition is remarkable in its acknowledgment that law, in the military context, is not exhausted by written statutes. Usage and custom, accumulated through the daily practice of the institution across time and circumstance, carry the force of law. This is a fundamentally different conception of law from that which prevails in civilian legal systems, where statute and judicial precedent dominate and custom plays a residual role. In the military context, custom is not a supplement to law. It is, in a deep sense, the living substance of law, the lived experience of lawfulness translated into routine expectation, informal sanction, and communal understanding.

This recognition of custom as law within military jurisprudence has ancient roots. It connects Bangladesh Air Force law to a tradition that stretches back through British military practice, through Roman military law, and ultimately to the earliest organised military formations in human history. Every organised armed force, from the legions of Rome to the armies of the Mughal Empire to the British Indian Army, has understood that the discipline necessary for military effectiveness cannot be entirely reduced to written rules. Much of it must be internalised, transmitted through socialisation and training, and enforced through the informal mechanisms of unit cohesion, peer expectation, and professional pride.

At the same time, this recognition of custom creates a tension that runs throughout military jurisprudence: the tension between the flexibility that custom provides and the certainty, predictability, and fairness that written law demands. When an officer is charged with an offence under the Air Force Act, the fact that the Act explicitly incorporates "usages of the service" means that the accused may be held to standards that are nowhere written down, standards that exist in the collective institutional consciousness but that may not have been clearly communicated to the individual. This tension between institutional normativity and individual notice is one of the foundational jurisprudential problems of military law, and it will recur throughout this handbook.

1.2 Why Military Law Is Distinct from Civilian Law

The distinctiveness of military law from civilian law is a matter that has been debated by legal philosophers, political theorists, and military practitioners for centuries. The debate is not merely academic. It has practical consequences for how we understand the rights of service personnel, the legitimacy of military courts, the scope of commanding officer discretion, and the relationship between military justice and constitutional guarantees.

The most commonly offered justification for the distinctiveness of military law is functional: military operations require a level of discipline, cohesion, and immediate obedience that civilian

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society does not require, and ordinary civilian law is not designed to produce or enforce these qualities. This is the argument from military necessity. Justice Oliver Wendell Holmes Jr., writing in the context of American military jurisprudence, observed that the life of the law has not been logic but experience, and the experience of warfare teaches that armies that cannot enforce immediate and unhesitating obedience to orders collapse under pressure, with catastrophic consequences not just for military objectives but for the very civilians that the military exists to protect.

The argument from military necessity has been elaborated in various ways. Some theorists emphasise the unique environment of military service: the constant exposure to lethal risk, the geographical displacement from civilian society, the total institutional character of military life, and the operational requirements that place military personnel in situations of moral and physical extremity that have no civilian equivalent. Others emphasise the unique character of the military's social function: the armed forces exist to apply lethal force on behalf of the sovereign, and this unique capacity requires a unique framework of accountability that civilian law is not equipped to provide.

Critics of military law's distinctiveness challenge these justifications on multiple grounds. They argue that the necessity argument is overblown, that modern democratic armed forces function effectively in systems that provide robust procedural protections to service members, that the history of military justice is in substantial part a history of abuse, arbitrary punishment, and the systematic suppression of legitimate grievance, and that the exceptionalism claimed for military law frequently serves the interests of institutional authority rather than the interests of justice, discipline, or military effectiveness. These are serious arguments, and they have shaped significant reforms in military justice systems around the world in recent decades.

In Bangladesh, this debate has a particular historical resonance. The Bangladesh Air Force, like the Bangladesh Army and Navy, has operated in a country that has experienced military governance, where the armed forces have played roles extending far beyond the purely military. The relationship between military law, military authority, and civilian constitutional order has been contested in ways that have left permanent marks on the legal and institutional landscape. Understanding air force law in Bangladesh requires engaging honestly with this history.

1.3 The Functions of Air Force Law: Discipline, Justice, and Institutional Integrity

Air Force law serves several distinct but interrelated functions. The first and most obvious is the function of discipline: the maintenance of the standards of conduct, obedience, and professional behaviour necessary for the effective operation of an air force. Without discipline, an air force cannot function. Aircraft maintenance requires absolute adherence to technical procedures. Flight operations require unquestioning compliance with control instructions. Combat operations require the ability to execute complex, coordinated plans under conditions of extreme stress. The discipline that air force law helps to maintain is not blind obedience for its own sake. It is the structured, purposive coordination of human behaviour toward operational objectives that can only be achieved through collective, organised effort.

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The second function is the function of justice: the fair and proportionate resolution of disputes, accusations, and complaints within the service. Air Force law protects the rights of accused persons, provides mechanisms for appeal and review, establishes standards of evidence and procedure, and aims to ensure that punishment is proportionate to offence. This function exists in some tension with the function of discipline, since discipline may sometimes seem to demand swift, certain, and severe punishment, while justice demands deliberate, careful, and fair process. One of the enduring jurisprudential challenges of military law is managing this tension in a way that serves both values.

The third function is the function of institutional integrity: the maintenance of the professional standards, ethical norms, and public reputation upon which the legitimacy of the air force depends. Air Force law establishes standards of conduct that go beyond the merely operational. It governs the behaviour of personnel in their private lives to a degree that would be extraordinary in civilian law. It prohibits conduct unbecoming an officer, establishes standards of personal character and professional ethics, and provides mechanisms for removing from the service those whose conduct has compromised the honour and reputation of the institution. This function reflects the understanding that an air force is not merely a collection of technical specialists but a professional community with a distinct identity, ethos, and public trust.

The fourth function, less often discussed but no less important, is the function of political legitimation: the grounding of military authority in a framework of law that connects it to the broader constitutional and democratic order. In a constitutional democracy, the authority of an air force commander to give orders, to punish disobedience, to restrict the freedom of personnel, and to exercise the enormous powers that military command involves, must rest on a legal foundation. That foundation is provided by air force law. Without it, military authority would rest on naked power alone, which is antithetical to the constitutional order that the air force exists to defend.

1.4 The Relationship Between Air Force Law and Constitutional Order

The Constitution of the People's Republic of Bangladesh, 1972, is the supreme law of the land. All other law, including air force law, must be consistent with the Constitution. This is not merely a formal proposition. It has substantive implications for the interpretation and application of air force law that are often underappreciated.

The Constitution, in its fundamental rights provisions, guarantees to every citizen certain basic rights: the right to life and personal liberty under Article 32, equality before the law under Article 27, freedom from ex post facto punishment under Article 35(1), protection against double jeopardy under Article 35(2), protection against self-incrimination under Article 35(4), and the right to a fair and speedy trial under the spirit of Articles 31 and 35. These rights do not evaporate when a person puts on a uniform. They may be modified in their application by the exigencies of military service, but they cannot be eliminated.

The question of how constitutional rights apply to military personnel is one of the most actively debated questions in contemporary military jurisprudence worldwide. In Canada, the Supreme Court's decision in R v Edwards in April 2024 reaffirmed that military judges are entitled to

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judicial independence and that military personnel tried by court martial are entitled to the same Charter guarantee of impartiality as civilian accused, while recognising that the status of military judges as officers does not inherently undermine their independence. In the United States, the Supreme Court and the Court of Appeals for the Armed Forces have consistently grappled with how constitutional protections apply within the military context, producing a body of jurisprudence that acknowledges military distinctiveness while insisting on the constitutional foundations of military justice.

In Bangladesh, the constitutional dimensions of air force law have been less systematically explored in the published literature, but they are no less important. The Air Force Act of 1953, as a product of its time, was not designed with constitutional rights consciousness as its primary organising principle. It was designed primarily with operational discipline in mind. The challenge for contemporary practitioners and scholars of Bangladesh Air Force law is to read and apply the Act in light of constitutional values, to identify the points of potential tension, and to advocate for interpretations and reforms that bring military justice into closer alignment with constitutional standards of fairness and due process.

CHAPTER TWO: HISTORICAL ORIGINS OF BANGLADESH AIR FORCE LAW: FROM COLONIAL INHERITANCE TO NATIONAL IDENTITY

2.1 The Deep Historical Roots: Military Law in Ancient and Medieval Traditions

To understand where Bangladesh Air Force law comes from, it is necessary to understand something about the deep history of military law as a human institution. This is not mere antiquarianism. The legal forms, conceptual categories, and philosophical assumptions that shape contemporary Bangladesh Air Force law carry the sediment of centuries of legal development, and some of the most persistent problems in military jurisprudence are problems that have been recognised, debated, and imperfectly resolved many times over in the history of organised armed forces.

The earliest recognisable military codes in human history appear in ancient civilisations. The Roman legions operated under a highly developed system of military law that prescribed detailed rules for discipline, punishment, the distribution of spoils, the treatment of enemies, and the rights and obligations of soldiers. The Roman military legal system distinguished between capital offences, for which death was prescribed, and lesser offences, for which corporal punishment, reduction in rank, or loss of pay were appropriate. The commanding officer's authority to punish, the imperium, was extensive and only partially constrained by formal legal norms. This tension between commanding authority and formal legal constraint is one that will be immediately recognisable to any student of contemporary military law.

Medieval Islamic military law, developed in the context of the wars of the early caliphate and systematised by later jurists, established principles governing the conduct of warfare, the treatment of non-combatants, the prohibition of certain forms of violence, and the obligations of fighters to their commanders and to the wider community of believers. These principles,

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embedded in the tradition of Islamic jurisprudence and transmitted through the great legal schools, form part of the historical background of military law in Muslim-majority societies, including Bangladesh.

The Mughal Empire, which governed much of the Indian subcontinent from the sixteenth to the eighteenth century, had its own military legal traditions. The Mughal army was governed by a complex system of regulations, customary norms, and imperial command that prescribed the duties of officers and soldiers, regulated the treatment of prisoners and civilians, and provided mechanisms for the investigation and punishment of misconduct. These traditions, though not directly incorporated into contemporary Bangladesh Air Force law, form part of the broader cultural and institutional background within which military law operates in Bangladesh.

2.2 The British Colonial Legal Inheritance: The Indian Army Acts

The most immediate and direct historical ancestor of Bangladesh Air Force law is British military law as applied in colonial India. The British colonial enterprise in India was sustained in substantial part by military force, and the British Indian Army was one of the largest and most complex military organisations in the world. The legal framework governing this army was developed over centuries of colonial administration and underwent significant systematisation and codification during the nineteenth century.

The Indian Articles of War, promulgated in the late eighteenth century, were among the earliest attempts to provide a comprehensive written legal framework for the governance of the British Indian Army. These Articles drew heavily on the Articles of War that governed the British army in Britain, which in turn were derived from the customs and ordinances of war developed during the seventeenth century civil wars and systematised under the later Stuarts and the early Hanoverians. The Articles of War were not merely rules about conduct in battle. They governed the entire life of the soldier, prescribing duties, prohibiting specific forms of misconduct, establishing the framework of military courts, and setting out the procedures for trial and punishment.

The Indian Army Act of 1911 was a landmark in the development of military law in the Indian subcontinent. It consolidated and modernised the existing framework, drawing on the experience of several decades of military administration and judicial practice. The 1911 Act established the basic structure of military courts that would persist, in modified form, through the independence of India and Pakistan in 1947 and into the post-independence military law of Bangladesh. It established the distinction between general courts martial, district courts martial, and summary courts martial that continues to shape the structure of military justice in Bangladesh today. It provided for the jurisdiction of military courts, the rights of the accused, the powers of convening authorities, and the procedures for review and appeal. In these structural features, the continuity between the 1911 Act and the contemporary Bangladesh Air Force Act of 1953 is unmistakable.

The Air Force Act, 1953, which is the foundational legislation of Bangladesh Air Force law, was originally enacted by the Pakistan legislature shortly before the independence of Bangladesh. It was, in its essential structure, a military law enactment in the tradition of the Indian Army Act of

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1911 and the rules made thereunder, adapted to the specific requirements of air force service. When Bangladesh gained independence in 1971, it inherited this legislative framework, adapting it in terminology and modifying certain provisions to reflect the new national context.

The intellectual honesty demanded by serious legal scholarship requires that we acknowledge what this means. Bangladesh Air Force law, in its basic legislative architecture, is a colonial inheritance. Its fundamental concepts, its structural categories, its procedural frameworks, and many of its substantive provisions derive from British colonial military law. This is neither something to be celebrated uncritically nor something to be dismissed with reflexive anti-colonial indignation. It is a historical fact that must be understood in order to understand the law as it actually exists, and it is a challenge to which subsequent generations of Bangladeshi legal practitioners and scholars must continue to respond.

The colonial inheritance brings with it certain advantages. British military law, as developed over centuries of practice and refined through extensive judicial interpretation, is a sophisticated and relatively well-developed system. It has been subjected to intense intellectual scrutiny, has been tested in a wide variety of circumstances, and has produced a body of jurisprudence that addresses many of the fundamental problems of military justice. Bangladesh Air Force law, building on this foundation, does not have to start from scratch.

But the colonial inheritance also brings significant limitations and challenges. British colonial military law was designed to serve the interests of a colonial power in governing a subject people. It was not designed with the rights and dignity of the soldiers it governed as its primary concern. The commanding officer's authority was extensive and the procedural protections for the accused were limited. The appeal mechanisms were largely internal to the military hierarchy, with limited civilian judicial oversight. The assumption that soldiers were primarily instruments of policy rather than rights-bearing citizens was embedded in the structure of the law.

These assumptions do not sit comfortably with a constitutional democracy committed to the fundamental rights of all persons, including service personnel. The challenge of Bangladesh Air Force law in the contemporary period is precisely the challenge of taking a legal framework designed for colonial governance and adapting it to the requirements of a constitutional democracy committed to human dignity and the rule of law. This challenge has been met with varying degrees of success by post-independence reforms and judicial interpretation, but it remains, in important respects, an unfinished project.

2.3 The Pakistan Period: Military Law and Political Authority, 1947 to 1971

The period from 1947 to 1971, during which the territory of present-day Bangladesh formed the eastern wing of Pakistan, is an essential chapter in the history of Bangladesh Air Force law. During this period, the legal framework of the Air Force Act was shaped by the particular political circumstances of Pakistan, including the country's frequent resort to military governance and the systematic discrimination against Bengali officers and personnel that was among the factors that contributed to the liberation war.

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Pakistan's military law framework was substantially derived from the British colonial inheritance, with modifications appropriate to an independent state. The Air Force Act, enacted in 1953, was among the legislative consolidations of military law that took place in the early years of Pakistani independence. From the perspective of contemporary Bangladesh, what is most significant about the Pakistan period is not the specific technical provisions of the Air Force Act but the political environment within which military law operated.

Pakistan's military establishment, from an early stage in the country's history, exercised a degree of political influence that exceeded what is normally understood to be appropriate in a constitutional democracy. Military rule was imposed formally for the first time in 1958 under General Ayub Khan, and again subsequently. During these periods, military law became intertwined with martial law in ways that have no counterpart in peacetime constitutional governance. The distinction between the disciplinary law governing service personnel and the coercive apparatus of military government was blurred in ways that had lasting consequences for the character of military institutions in both Pakistan and, subsequently, Bangladesh.

For Bengali personnel in the Pakistan Air Force during this period, the experience of military law was shaped by the politics of ethnic and regional discrimination. Bengali officers and airmen consistently reported that they were passed over for promotion, assigned to less prestigious postings, and treated as less reliable and less capable than their West Pakistani counterparts. The institutional culture of the Pakistan Air Force reflected the dominant West Pakistani political and cultural establishment, in which Bengali identity was often marginalised or denigrated.

This experience of discrimination and marginalisation had two consequences that are directly relevant to the history of Bangladesh Air Force law. First, it generated a sense of grievance and resentment that contributed to the willingness of Bengali military personnel to join the liberation movement in 1971. Second, it meant that the new Bangladesh Air Force, formed in the heat of the liberation war and afterwards, was built not only on the inherited legal framework of the Air Force Act but also on a powerful sense of institutional identity that was defined in part by contrast with the experience of discrimination and oppression in the Pakistan Air Force.

2.4 The Liberation War and the Birth of the Bangladesh Air Force

The Bangladesh Air Force was born in circumstances of extraordinary difficulty and heroism. The liberation war of 1971, which resulted in the independence of Bangladesh, was also the context in which the foundations of the Bangladesh Air Force were laid. Understanding these circumstances is essential to understanding the institutional culture and legal ethos of the force.

When the Pakistan Army launched its brutal crackdown on the Bengali population on the night of March 25, 1971, a number of Bengali pilots and air force personnel who happened to be present in East Pakistan made the decision to join the liberation movement. These men, trained in the skills of aviation and military organisation, brought their professional capabilities to the service of the liberation struggle. The air operations of the liberation war were limited in scale, given the resources available to the freedom fighters, but they were not insignificant. Most famously, on December 3, 1971, as the war entered its final phase and India intervened militarily, the small force of Bengali pilots that had been organising themselves in India

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conducted attacks on Pakistani targets that had both operational significance and immense symbolic importance.

The legal dimensions of this founding moment deserve careful attention. The Bengali personnel who joined the liberation movement were, from the perspective of the Pakistan Air Force's legal framework, deserters and traitors. They were subject to the full penalties of military law for abandonment of their posts, joining the enemy, and taking up arms against the state. From the perspective of the emerging Bangladesh, they were patriots, heroes, and founders of a new national institution. This paradox of legal status, in which the same act is simultaneously a supreme crime under one legal order and a supreme virtue under another, is one of the most philosophically rich aspects of the Bangladesh Air Force's founding history.

It also raises profound questions about the nature of military obedience and its limits. What is the legal and moral obligation of a military officer when the state whose uniform he wears is perpetrating what would later be recognised as genocide against his own people? When does the duty of obedience to legitimate authority give way to the duty of resistance to illegitimate and criminal power? These are not merely abstract philosophical questions. They were lived, urgent, existential questions for the Bengali men and women who served in the Pakistan Air Force in 1971, and the answers they gave have shaped the institutional consciousness of the Bangladesh Air Force ever since.

The jurisprudential literature on the limits of military obedience is extensive and reaches back at least to the Nuremberg trials, in which the Nuremberg Tribunal rejected the defence of superior orders as a complete justification for participation in atrocities. The principle that emerged from Nuremberg, subsequently codified in international humanitarian law, is that military personnel are not merely instruments of their commanders but are themselves bound by the laws and customs of war and by the fundamental norms of humanity. They have both the right and, in some circumstances, the duty to refuse unlawful orders. Bangladesh's founding military personnel acted on this principle, even before it was fully articulated in international law.

After liberation, the Bangladesh Air Force was formally constituted, inheriting the legal framework of the Air Force Act of 1953 but investing it with a new institutional identity. The Act was retained in its essential form, with modifications of terminology to reflect the new national context, primarily the replacement of references to Pakistan with references to Bangladesh. This legislative continuity was a pragmatic choice that reflected the need to establish a functioning legal framework quickly, drawing on existing materials. It also reflected the reality that, whatever the political transformation brought about by independence, the technical requirements of military law, the need for discipline, the structures of courts martial, the definitions of offences, remained substantially the same.

2.5 Post-Independence Legal Development: Amendments, Adaptations, and the 2016 Reform

The history of Bangladesh Air Force law since 1971 is a history of gradual adaptation and periodic reform, punctuated by the more dramatic interventions of military governance and by the progressive development of constitutional consciousness in Bangladeshi jurisprudence.

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The most significant recent legislative development in the framework of Bangladesh defence law is the Defence Services (Amendment) Act, 2016, enacted as Act No. 15 of 2016. This Act made important amendments to the Air Force Act, the Army Act, and the Navy Ordinance, reflecting accumulated experience and the need to update certain provisions. Among the most notable amendments were those relating to the rank structure, including the introduction of the rank of Master Warrant Officer and the corresponding adjustments to the definitions and provisions of the Act. These amendments reflect the organic development of the service's rank structure in response to operational requirements and administrative experience.

However, the 2016 amendments, while significant, did not address the deeper structural and philosophical questions that arise from the colonial inheritance of the Air Force Act. They were amendments to specific provisions rather than a comprehensive reconsideration of the Act's foundational assumptions. The question of whether Bangladesh Air Force law needs a more fundamental overhaul, one that would bring it into closer alignment with contemporary constitutional values and international standards of fair trial and due process, remains actively debated.

In this context, it is instructive to look at how other jurisdictions have approached the reform of military justice. Canada, for example, has undertaken extensive reforms to its military justice system over the past two decades, driven in part by decisions of the Supreme Court of Canada that applied the Canadian Charter of Rights and Freedoms to military proceedings. The United Kingdom enacted the Armed Forces Act of 2006, which made significant changes to the framework of military justice. Australia and New Zealand have similarly reformed their military justice systems in response to both domestic constitutional requirements and international standards.

Bangladesh has not yet undertaken a comparable comprehensive reform, and the arguments for such a reform are compelling. The Air Force Act of 1953, for all its practical utility, reflects the legal philosophy and political assumptions of mid-twentieth-century British colonial law. A comprehensive reform that would retain the essential structure of the Act while modernising its provisions to reflect contemporary constitutional values, international human rights standards, and the accumulated experience of military justice reform in comparable jurisdictions would be a significant contribution to the rule of law in Bangladesh and to the professional development of the Bangladesh Air Force.

2.6 Military Governance and Its Impact on Air Force Law: The Zia and Ershad Eras

No account of the history of Bangladesh Air Force law can avoid engaging with the periods of military governance that Bangladesh experienced after independence. The regime of General Ziaur Rahman, who came to power in 1975 following the assassination of Sheikh Mujibur Rahman and ruled until his own assassination in 1981, and the subsequent regime of General Hussein Muhammad Ershad, who ruled from 1982 to 1990, both profoundly shaped the relationship between military law and the broader legal and political order.

During the Zia era, military law and martial law became intertwined in ways that blurred the distinction between the disciplinary law governing service personnel and the coercive

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governance of civilian society. Proclamations issued under martial law authority operated alongside and sometimes in supersession of ordinary law, including military law. The courts, both civilian and military, operated under constraints that compromised their independence. On November 15, 1975, Ziaur Rahman promulgated military regulations that included provisions for capital punishment for inciting rebellion within the armed forces, a measure that reflected the precarious nature of his hold on power and the intense internal tensions within the military establishment following the events of 1975.

These periods of military governance left a complex legacy for Bangladesh Air Force law. On one hand, they demonstrated the enormous institutional and coercive power that military authority could exercise when unconstrained by civilian constitutional governance. On the other hand, they demonstrated the costs of such governance: the erosion of institutional integrity, the corruption of the relationship between command authority and legal accountability, and the long-term damage to the civil-military relationship that such periods of military governance invariably produce.

For the Bangladesh Air Force specifically, the periods of military governance created institutional tensions that have not been entirely resolved. The experience of having Air Force commanders serving as political actors, involved in the governance of the state rather than purely in the management of the air force, inevitably shapes the institutional culture and the self-understanding of the service. It raises questions about the proper relationship between military authority and civil governance, about the boundaries of the commanding officer's legitimate authority, and about the conditions under which military personnel may be asked or expected to participate in activities that go beyond the purely military.

The democratic transition completed in 1990, when popular pressure compelled General Ershad to resign, and the subsequent development of democratic governance in Bangladesh, have created the conditions for a more appropriate relationship between military law and constitutional order. The Bangladesh Air Force, under democratic governance, operates within a constitutional framework that is explicitly committed to the supremacy of civil authority over the military. The Constitution places the armed forces under the authority of the President as commander in chief and under the democratic government that commands a parliamentary majority. Military law must be understood and applied within this constitutional framework.

CHAPTER THREE: THE CONSTITUTIONAL ARCHITECTURE OF BANGLADESH AIR FORCE LAW

3.1 The Constitution of Bangladesh 1972 and the Armed Forces

The Constitution of the People's Republic of Bangladesh, adopted on November 4, 1972, is the foundational legal document of the Bangladeshi state. It establishes the basic structure of governance, defines the fundamental rights of citizens, allocates authority among the branches of government, and provides the framework within which all other law, including air force law, must be understood and applied.

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The Constitution's treatment of the armed forces is characterised by what might be called principled subordination: the armed forces are recognised as an essential institution of the state, serving the vital function of national defence, but they are firmly placed under civil authority. The President of the Republic is the supreme commander of the defence services. The defence services operate under the authority of the government, which in turn is responsible to the Parliament and, through Parliament, to the people.

This constitutional arrangement reflects the foundational principle of democratic governance that military power is legitimate only when it is exercised under civil authority and in service of the sovereign people. The principle is not merely formal. It has substantive implications for the interpretation and application of air force law at every level. The authority that the Air Force Act confers on commanding officers, convening authorities, and other military officials is a derived authority, delegated from the constitutional sovereign and exercised in trust. It must be exercised consistently with the constitutional order and the fundamental rights it protects.

Article 32 of the Constitution provides that no person shall be deprived of life or personal liberty save in accordance with law. This provision applies to military personnel no less than to civilians. A member of the Bangladesh Air Force who is subjected to confinement, restriction of movement, or other forms of deprivation of liberty must be treated in accordance with law. The Air Force Act provides the relevant legal framework, but the Act must be interpreted and applied consistently with the constitutional guarantee. Arbitrary confinement, detention without lawful authority, and punishment without due process are constitutional violations regardless of their context.

Article 27 of the Constitution guarantees equality before the law and the equal protection of the law. This provision has important implications for air force law, particularly in relation to the consistency of military justice. The principle of equal treatment requires that similar offences be treated similarly, that personal favouritism and institutional prejudice not influence the administration of military justice, and that the standards applied to one rank or category of personnel not be systematically different from those applied to others in comparable situations.

Article 35 of the Constitution contains a cluster of protections that are directly relevant to military justice proceedings. The prohibition on ex post facto punishment (Article 35(1)) means that a member of the Bangladesh Air Force cannot be charged with an offence under the Air Force Act for conduct that was not an offence at the time it was committed, even if subsequently declared to be an offence. The protection against double jeopardy (Article 35(2)) means that an airman or officer who has been acquitted of an offence cannot be tried again for the same offence. The protection against self-incrimination (Article 35(4)) means that no person subject to the Air Force Act can be compelled to give evidence against himself. These protections, while not always explicitly articulated in the Air Force Act itself, are constitutionally mandated and must inform the interpretation and application of the Act.

3.2 The Defence Services Laws Amendment Act 2016 in Constitutional Context

The Defence Services (Amendment) Act of 2016 represents the most recent significant parliamentary engagement with the framework of Bangladesh military law. Enacted by the Jatiya

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Sangsad, it reflects both the practical requirements of modernising certain provisions and the ongoing process of subjecting military law to parliamentary scrutiny and democratic accountability.

From a constitutional perspective, the significance of the 2016 amendment lies as much in its process as in its substance. The fact that the Parliament of Bangladesh enacted these amendments through the ordinary legislative process, through debate, committee examination, and parliamentary vote, represents the proper exercise of constitutional authority over the military legal framework. It embodies the principle that military law derives its legitimacy from the democratic sovereign, not from military authority itself.

The specific amendments made by the 2016 Act, while primarily technical in character, did have some jurisprudentially significant elements. The provisions relating to Master Warrant Officers, for example, required careful consideration of questions of jurisdiction, command authority, and the rights of personnel of this rank category in disciplinary proceedings. The process of working through these questions in the legislative drafting process, with all the consultation and deliberation that involves, is a model of the democratic development of military law.

3.3 Constitutional Review of Military Law: The Role of the High Court Division

A question of particular jurisprudential importance in Bangladesh is the extent to which decisions of military courts and military authorities are subject to review by the civilian courts, particularly the High Court Division of the Supreme Court of Bangladesh exercising its supervisory jurisdiction under Article 102 of the Constitution.

Article 102 empowers the High Court Division to issue directions in the nature of mandamus, prohibition, certiorari, and habeas corpus. The question of whether and to what extent these writs extend to decisions of military courts is one that has been addressed in different ways by different jurisdictions. In India, for example, the Supreme Court and High Courts have exercised jurisdiction to review decisions of courts martial on grounds of violation of fundamental rights, lack of jurisdiction, and procedural irregularity. In Pakistan, the superior courts have similarly asserted jurisdiction in appropriate cases.

In Bangladesh, the judicial review of military decisions has been relatively limited in practice, partly because of the practical difficulties of challenging military authority, partly because of uncertainty about the precise scope of judicial review in this context, and partly because the institutional culture of deference to military authority has sometimes discouraged legal challenges. However, the constitutional basis for judicial review of military decisions that violate fundamental rights is clear, and there are compelling arguments for its more active exercise.

The principle that underlies judicial review of military decisions is the same principle that underlies judicial review of all exercises of public authority: that power exercised without lawful authority or in violation of fundamental rights is not legitimate power and can be corrected by a court. A commanding officer who imprisons a member of the Air Force without lawful authority is not acting within the scope of the Air Force Act. He is acting ultra vires, beyond his powers,

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and the High Court Division has constitutional authority to correct this by issuing a writ of habeas corpus.

The development of a more robust jurisprudence of judicial review of military decisions in Bangladesh would be a significant contribution to the rule of law and to the proper constitutional governance of the armed forces. It would not undermine military discipline. On the contrary, it would strengthen the legitimacy of military authority by grounding it more firmly in the rule of law and constitutional order.

CHAPTER FOUR: THE PHILOSOPHICAL FOUNDATIONS OF AIR FORCE LAW: JURISPRUDENTIAL THEORIES AND THEIR APPLICATION

4.1 The Natural Law Tradition and Military Justice

Jurisprudential philosophy provides several distinct theoretical frameworks for understanding the nature, purpose, and legitimacy of law. Each of these frameworks has something important to say about military law in general and Bangladesh Air Force law in particular. This chapter explores the most significant of these frameworks and considers their application to the specific problems of air force law.

The natural law tradition, which traces its origins to ancient Greece and Rome and was developed through the medieval scholastic tradition and the early modern period, holds that there exists a body of law, superior to positive human-made law, that is derived from reason, human nature, or divine command. Positive human law is legitimate only insofar as it conforms to this higher natural law. Law that violates natural law is not merely unjust but, on the strongest versions of the theory, is not law at all.

For military law, the natural law tradition has several important implications. First, it provides a theoretical basis for the principle, now codified in international humanitarian law and the laws of armed conflict, that certain orders must not be obeyed regardless of their source. The principle that an order to commit atrocity is not a lawful order is, at its deepest philosophical level, a natural law principle: the command of a superior, however formally legitimate, cannot override the fundamental moral norms that govern human conduct. The Nuremberg Tribunal's rejection of the superior orders defence draws on this natural law tradition, as does the International Criminal Court's treatment of command responsibility.

For Bangladesh Air Force law, the natural law tradition invites attention to the question of whether the specific provisions of the Air Force Act conform to the demands of justice and human dignity. It invites the question of whether the protections offered to accused persons in the military justice system are adequate, whether the punishments prescribed are proportionate, and whether the system as a whole treats those subject to it with the respect that is owed to persons by virtue of their humanity. These are not merely rhetorical questions. They are the questions that drive genuine legal reform and that distinguish a living legal tradition from a static institutional apparatus.

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4.2 Legal Positivism and the Command Theory of Military Law

Legal positivism, most closely associated with the work of John Austin, H.L.A. Hart, and Hans Kelsen, holds that law is a matter of social fact rather than moral evaluation. What makes a rule a law is not its conformity to moral principles but its derivation from a recognised source of authority and its enforcement by the relevant social institutions. From a positivist perspective, the Air Force Act of 1953 is law because it was enacted by the competent legislative authority, has been applied by the relevant institutions, and is enforced by the coercive apparatus of the state. The moral qualities of the Act's provisions are a separate question from their legal validity.

This positivist framework has practical utility for the daily operation of military law. A judge advocate advising a commanding officer on the legality of a particular disciplinary action needs to know what the law is, not whether it is morally optimal. The positivist approach provides a method for answering that question: look to the text of the Act, the rules made thereunder, the relevant precedents, and the established practices of the service.

However, positivism has well-recognised limitations when applied to military law. H.L.A. Hart himself acknowledged, in his concept of the minimum content of natural law, that any legal system must contain certain basic protections of persons and property if it is to function as a system of law at all. Military justice systems that do not provide adequate procedural protections, that allow arbitrary punishment, and that systematically disregard the rights of accused persons are not merely morally deficient. They fail, on Hart's own analysis, to qualify as genuine legal systems. They are systems of power masquerading as law.

The command theory of law, derived from Austin's work, has an intuitive appeal in the military context, where the structure of command authority is central to the institution's identity. On Austin's theory, law is the command of a sovereign, backed by sanctions. The commanding officer of an air force base, within his jurisdiction, issues commands backed by the disciplinary authority conferred by the Air Force Act. This looks very much like law in the Austinian sense.

But the analogy breaks down on examination. Even within the military, command authority is not unlimited. It is constrained by the Air Force Act, by the Constitution, by international law, and by the customary standards of the service. A commanding officer who exceeds his authority is not making law. He is acting unlawfully. The structure of military authority is hierarchical not because hierarchy is inherently legitimate but because hierarchy, properly constrained by law, is the organisational form that enables an air force to function.

4.3 Dworkin's Interpretive Theory and the Integrity of Military Law

Ronald Dworkin's interpretive theory of law, developed in works such as "Law's Empire" (1986) and "Justice for Hedgehogs" (2011), offers a rich framework for thinking about military law that goes beyond both natural law and positivism. On Dworkin's account, law is not simply a body of rules derived from authoritative sources but is a practice of interpretation, in which legal interpreters, including judges, lawyers, and those who advise on legal questions, seek to identify the best interpretation of the legal materials available to them, an interpretation that makes the

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law the best it can be, consistent with its past, and faithful to the principles of justice and fairness.

Applied to Bangladesh Air Force law, Dworkin's framework suggests that the judge advocate, the commanding officer, and the court martial member who must apply the Air Force Act are not merely looking for the correct rule to apply mechanically. They are engaged in an act of interpretation that requires them to consider what the Act, understood in the light of its purposes, its history, and the constitutional principles within which it operates, requires in the particular case before them. The best interpretation of the Act is one that serves the Act's purposes of maintaining discipline and doing justice, consistent with the constitutional values of the Bangladeshi legal order.

This interpretive approach has significant practical implications. When the Air Force Act is ambiguous, when it does not clearly address the situation at hand, or when a literal application of its provisions would produce a result inconsistent with its purposes or with constitutional values, the interpretive approach requires the decision-maker to go beyond the text to the underlying principles. This is not a licence for arbitrary decision-making. It is a recognition that law is a purposive practice and that applying law requires understanding its purposes.

4.4 The Critical Legal Studies Perspective: Power, Ideology, and Military Law

The critical legal studies movement, which emerged in American law schools in the late 1970s and early 1980s and has produced a substantial body of scholarship, offers a more sceptical perspective on military law. Critical legal scholars argue that law is not the neutral, principled system that it presents itself to be. It is, rather, a system of power, one that reflects and reinforces the interests of the dominant groups in society, that uses the language of principle and right to legitimate arrangements that are fundamentally about the distribution of power and the maintenance of hierarchy.

Applied to military law, this perspective invites attention to the ways in which the Air Force Act and the military justice system it creates serve to maintain the authority of military hierarchy, to suppress challenges to that authority, and to discipline those who resist the demands of the institution. It invites the question of who benefits from military law as it currently exists, who is disadvantaged by it, and whose interests are served by the particular distribution of authority, discretion, and procedural protection that it embodies.

This is not a comfortable analysis for those whose professional lives are invested in the military justice system. But intellectual honesty requires engaging with it. The historical record of military justice, not only in Bangladesh but in most countries, includes episodes of arbitrary punishment, the suppression of legitimate grievance, the persecution of those who challenged authority, and the systematic disadvantaging of those of lower rank. These are not aberrations in an otherwise well-functioning system. They are, the critical legal scholars argue, predictable consequences of a system designed to maintain hierarchy and discipline rather than to serve justice.

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The response to this critique is not to abandon military law but to take its deficiencies seriously and to work continuously toward a more just and principled system. The critical perspective, at its most useful, functions not as a counsel of despair but as a source of vigilance against the corruptions of power that are inherent in any system of institutional authority.

4.5 Feminist Jurisprudence and Gender in Air Force Law

Feminist jurisprudence has increasingly engaged with military law, particularly in connection with the treatment of women in military institutions and the legal response to sexual misconduct within the armed forces. This dimension of military law has become enormously significant in recent years, as armed forces around the world have confronted widespread problems of sexual harassment, sexual assault, and the institutional failure to respond adequately to these problems.

For Bangladesh, the question of women in the Air Force is a relatively recent development. Women officers began to serve in the Bangladesh Air Force in roles previously reserved for men, a development that has created new questions about the application of military law to female personnel and about the adequacy of existing legal frameworks to address the forms of misconduct that female personnel may experience.

The feminist critique of military law focuses on several dimensions. First, it argues that military law has historically been designed by and for men, reflecting a predominantly masculine institutional culture that has been inadequately attentive to the specific vulnerabilities and experiences of women in military service. Second, it argues that the command-based structure of military justice, in which the commanding officer exercises significant discretion over the disposition of charges, is particularly problematic in cases of sexual misconduct, where the perpetrator may be the commanding officer himself or may have access to the commanding officer that the victim lacks. Third, it argues that the definition of misconduct in military law, including the definition of conduct unbecoming an officer, needs to be understood in ways that are attentive to the specific harms that women in military service may experience.

In the United States, the Military Justice Improvement Act debates and the subsequent reforms to the Uniform Code of Military Justice have addressed some of these concerns by, among other things, removing certain categories of sexual offence from the discretion of commanding officers and placing them under independent military prosecutors. Similar reforms have been contemplated or implemented in other jurisdictions. Bangladesh Air Force law has not yet engaged systematically with these questions, but the increasing participation of women in the Air Force makes it inevitable that these issues will require attention.

4.6 The Sociology of Total Institutions: Erving Goffman and Military Law

The sociological perspective offers another important lens through which to understand military law. Erving Goffman's concept of the "total institution," developed in his landmark work "Asylums" (1961), describes a type of institution that encompasses all aspects of the lives of those who inhabit it, that creates a sharp boundary between the institutional world and the outside world, and that subjects its inhabitants to a pervasive system of regulation, surveillance, and sanction.

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Military institutions are paradigmatic total institutions in Goffman's sense. The air force base or cantonment encompasses the physical life of its personnel to a degree that has no parallel in civilian employment. Personnel live on the base, eat in service messes, socialise within the institutional community, and are subject to regulation even in their private lives. Their dress, comportment, speech, and relationships are governed by institutional norms enforced by the authority of the Act.

Goffman's analysis of total institutions reveals the profound psychological and social effects of this comprehensive institutional control. The process of induction into a total institution, which he calls "mortification of the self," involves the systematic stripping away of the civilian identity of the new entrant and its replacement with an institutional identity. This process, embodied in the training regime of every air force, serves the institutional purpose of creating committed, disciplined service personnel. It also raises profound questions about autonomy, dignity, and the legal treatment of persons who have undergone such a process.

Military law, understood in the light of Goffman's analysis, can be seen as the formal regulatory dimension of the total institution, the system of explicit rules and sanctions that supplements the informal social controls of institutional life. The persistence of the distinction between formal sanctions under the Air Force Act and informal sanctions through peer pressure, social exclusion, and command displeasure is a persistent feature of military life that any adequate understanding of military law must acknowledge.

CHAPTER FIVE: THE AIR FORCE ACT OF 1953: ARCHITECTURE, SCOPE, AND ANALYTICAL FRAMEWORK

5.1 The Structure of the Act: An Overview

The Air Force Act of 1953 is the principal legislation governing the Bangladesh Air Force. It is a comprehensive enactment that covers an extraordinary range of subjects: the definition of those subject to the Act, the offences for which they may be tried, the courts that may try them, the procedures to be followed in investigation and trial, the punishments that may be imposed, and a wide range of ancillary matters relating to the administration of the service and the rights and obligations of personnel.

The Act is organised into chapters, each dealing with a distinct area of subject matter. This structure reflects the legislative inheritance from the Indian Army Act of 1911 and similar enactments, and it is broadly comparable to the structure of military law enactments in other Commonwealth countries, though the specific provisions naturally reflect the particularities of the Bangladesh context.

The preliminary chapter of the Act (Chapter I) is of foundational importance. It establishes the scope of the Act's application, defining who is subject to its provisions. Section 2 of the Act identifies the categories of persons subject to the Act, a question of enormous practical significance because the Act's criminal and disciplinary provisions only apply to those who are

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subject to it. The Act applies to officers, master warrant officers, warrant officers, non-commissioned officers, and airmen of the Bangladesh Air Force. It applies to members of the Bangladesh Air Force Reserve when they are called up for training, exercise, or actual service. It applies, in defined circumstances, to persons attached or seconded to the Air Force from the Army or Navy.

The breadth of the definition of "persons subject to this Act" is one of the features that distinguishes military law from civilian law. The reach of the Act does not depend on the commission of an offence in a particular place or territory. A member of the Bangladesh Air Force, whether serving in Bangladesh or on deployment abroad, whether on duty or on leave, is subject to the Act. The Act reaches into the private life of the service member to a degree that has no counterpart in ordinary criminal law.

5.2 Section 4: The Definitional Architecture

Section 4 of the Air Force Act establishes the definitional framework within which the entire Act operates. These definitions are not mere technical provisions. They are the conceptual building blocks of the legal system, and understanding them is essential to any serious engagement with the Act.

The definition of "Air Force" in Section 4(iv) is particularly significant. It defines the Air Force as including officers, master warrant officers, warrant officers, and airmen who by their commission, junior commission, terms of enrolment, or otherwise are liable to render continuously for a term air force service to Bangladesh in every part of the world. This definition of service obligation is universal in geographic scope. A member of the Bangladesh Air Force is not merely committed to serve in Bangladesh. He or she is committed to serve "in every part of the world," which reflects the understanding that military service, by its nature, may involve deployment wherever operational requirements dictate.

The definition of "Air Force custody" in Section 4(v) deserves careful attention. It defines custody as the "arrest or confinement of a person according to the usages of the service," explicitly including military or naval custody. This definition is notable for several reasons. First, it grounds the concept of air force custody in the usages of the service rather than in a set of detailed procedural rules, which again reflects the role of custom in military law. Second, it extends the concept of custody beyond the specifically air force context to include military or naval custody, reflecting the joint character of certain operations and the potential for inter-service detention.

The definition of "Air Force law" in Section 4(vi), as noted above, includes the law enacted by the Act and the rules made thereunder and explicitly includes "the usages of the service." This is a definitional recognition of the importance of custom in military law, and it has the practical consequence of potentially exposing personnel to liability for conduct that violates established usages even if it is not explicitly addressed by the Act or the rules.

The definition of "civil offence" in the Act is a provision of great practical importance. The Act does not merely create specific military offences. It also extends air force jurisdiction to civilian

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offences, acts that would be criminal under ordinary criminal law if committed in Bangladesh. The interaction between military jurisdiction and civilian criminal jurisdiction in relation to civil offences is one of the most complex areas of Bangladesh Air Force law, involving questions about concurrent jurisdiction, the exercise of prosecutorial discretion, and the rights of accused persons.

5.3 Offences Under the Air Force Act: A Systematic Analysis

The offence provisions of the Air Force Act represent perhaps the most practically important part of the legislation. They define the conduct for which members of the Air Force may be tried by court martial or dealt with summarily, and they establish the maximum punishments that may be imposed for each category of offence.

The Air Force Act, consistent with the tradition of military law, organises offences into several broad categories, reflecting the distinct types of harm that military misconduct can cause.

The first and most serious category of offences relates to what might be called offences against the military order itself: mutiny, sedition, and related offences. Mutiny, under the Act, consists in collective or individual resistance to lawful authority, including collective disobedience of orders, combined insubordination, or organised resistance to the exercise of command. The offence of mutiny is the gravest in the military legal lexicon because it strikes at the very foundation of military organisation. An air force in which personnel collectively refuse to obey orders, or in which organised resistance to command authority is possible, cannot function at all.

The jurisprudence of mutiny under Bangladesh military law has been shaped by significant cases arising in the Army context, which, given the structural similarity between the Army Act and the Air Force Act, have direct relevance to air force law. The Appellate Division of the Supreme Court of Bangladesh, in considering mutiny cases arising from the extraordinary events of 1975, has engaged with the definition of mutiny in ways that are directly relevant to the interpretation of similar provisions in the Air Force Act. The court's analysis of what constitutes collective insubordination, what distinguishes mutiny from other forms of disobedience, and the requirements of evidence in mutiny cases, provides important guidance for the application of the corresponding provisions of the Air Force Act.

The second category of offences relates to absence without leave, desertion, and related conduct. Absence without leave is among the most commonly prosecuted offences in military justice systems worldwide, and Bangladesh Air Force law is no exception. The Act distinguishes between absence without leave, which is a relatively minor offence, and desertion, which is a much more serious offence requiring proof of an intention to remain permanently absent or of specified aggravating circumstances.

The law on desertion raises interesting jurisprudential questions about the nature of military service obligation and the circumstances under which non-compliance with that obligation may be justified. In general, the Act takes a strict approach: the service member's obligation to serve is absolute within the terms of his or her commission or enrolment, and failure to fulfil it is an offence regardless of the reasons. However, human rights jurisprudence, particularly in the

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context of conscientious objection and the treatment of those who refuse military service on grounds of conscience, has increasingly challenged this absolutism.

The third category of offences relates to conduct in relation to the enemy, including offences of cowardice, failure to perform military duty, giving aid or comfort to the enemy, and related conduct. These offences reflect the ultimate purpose of military service, the prosecution of armed conflict, and they carry correspondingly severe penalties. The Act provides for the death penalty for certain of these offences, reflecting the traditional principle that the gravest military crimes are those that betray the lives of comrades and the security of the nation.

The fourth category, conduct to the prejudice of good order and discipline, is the catch-all provision of military criminal law, the equivalent of the common law offence of public nuisance in its function of capturing conduct that threatens the proper functioning of the institution without necessarily falling within any of the specific named offences. This provision has been criticised as insufficiently specific, as creating uncertainty about what conduct is prohibited, and as providing excessive discretion to commanding officers and courts to characterise conduct as criminal. The principle of legality, embodied in the constitutional prohibition on ex post facto punishment and in the fundamental principle that criminal law must be sufficiently certain to give persons fair notice of what conduct is prohibited, sits uncomfortably with an open-ended offence provision.

The fifth category is that of civil offences, acts that would be criminal under ordinary law if committed in Bangladesh. The incorporation of civil offences into military jurisdiction reflects the principle that service members are not above civilian law and that the military justice system is an appropriate venue for trying personnel who commit ordinary crimes, at least when the conduct has a sufficient nexus to military service.

5.4 The Punishment Hierarchy: Philosophy and Practice

The Air Force Act establishes a hierarchy of punishments that can be imposed on those found guilty of offences. Understanding this hierarchy requires engaging with both the technical legal provisions and the underlying philosophy of punishment that they reflect.

At the apex of the punishment hierarchy stands the death penalty. The Act provides for capital punishment for certain of the most serious offences, particularly offences relating to mutiny, treachery, and certain conduct in relation to the enemy. The retention of the death penalty in military law reflects the traditional principle that the extreme gravity of certain military offences justifies the extreme sanction, and it reflects the historical tradition in which military law has always treated certain offences as warranting death.

The retention of the death penalty in Bangladesh Air Force law is, however, a matter that deserves serious critical engagement. The international trend in military justice, as in civilian criminal justice, has been toward the restriction and eventual abolition of capital punishment. The arguments against capital punishment in military law are the same as those against it in civilian law: the risk of executing the innocent, the failure of deterrence evidence to support its efficacy, the incompatibility of the irreversibility of execution with the possibility of wrongful

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conviction, and the degrading character of state killing. Bangladesh has not yet engaged systematically with these arguments in the context of military law reform.

Below capital punishment, the Act provides for imprisonment, from life imprisonment down to short periods of confinement. The imprisonment provisions reflect a graduated approach to punishment that attempts to match the severity of the sanction to the gravity of the offence. The Act also provides for punishments specifically applicable to military service: cashiering, which is the most severe form of dismissal from the service, carrying permanent disgrace and certain civil consequences; dismissal from the service, less severe than cashiering; reduction in rank; forfeiture of seniority; fine; and various forms of minor punishment applicable in summary proceedings.

The philosophy of punishment that underlies this hierarchy is a mixture of retributive, deterrent, and rehabilitative theories. The retributive element is clearest in relation to the most serious offences, where the punishment prescribed is designed to be proportionate to the moral gravity of the conduct. The deterrent element is visible throughout: military law aims not only to punish those who have committed offences but to deter others from committing similar offences. The rehabilitative element is present in the provisions for minor punishments and in the emphasis on disciplinary measures short of criminal prosecution for less serious misconduct.

CHAPTER SIX: THE MILITARY JUSTICE SYSTEM: COURTS, PROCEDURES, AND DUE PROCESS

6.1 The Structure of Military Courts in Bangladesh Air Force Law

The Air Force Act of 1953 establishes a hierarchy of military courts that reflects the hierarchical structure of the service and the gradation of the offences for which they have jurisdiction. Understanding this hierarchy is essential to understanding how military justice operates in practice and to evaluating the procedural protections available to accused persons.

The most authoritative of the military courts established under the Act is the General Court Martial. A General Court Martial has jurisdiction to try any person subject to the Air Force Act for any offence punishable under the Act. It is the only court that can impose the full range of punishments, including the death penalty and imprisonment for life. A General Court Martial must be convened by an authority designated by or under the Act, and its composition is prescribed in terms of the minimum number of members and their required rank and qualification. The requirement that a General Court Martial be properly constituted and convened by competent authority is not a mere formality. It goes to the jurisdiction of the court, and any deviation from the requirements of proper constitution or convening is a basis for challenging the validity of proceedings.

Below the General Court Martial stands the District Court Martial, which has jurisdiction over a narrower range of offences and cannot impose the most severe punishments. The District Court

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Martial is used for offences of intermediate severity and provides a somewhat simpler procedural mechanism than the General Court Martial.

The Summary Court Martial is the simplest and most expeditious form of military court. It can be convened by an authorised officer and deals with less serious offences by means of a relatively swift procedure. However, the simplicity of the Summary Court Martial's procedures is a matter of legitimate concern: the protections available to an accused in a Summary Court Martial are considerably less than those available in a General Court Martial, and the risk of injustice is correspondingly greater. The constitutional constraints on the Summary Court Martial's procedure, the minimum requirements of fair hearing and due process that apply even to summary proceedings, are an important safeguard that must be vigorously maintained.

Summary Proceedings, as distinct from Summary Court Martial, allow commanding officers to deal with minor offences by a yet simpler procedure and to impose minor punishments directly, without the need to convene a court. Summary Proceedings are used for the great majority of disciplinary matters that arise in the day-to-day life of the Air Force. They are quick, informal, and designed to be corrective rather than punitive in the full criminal sense. However, they raise important questions about fairness and due process: the accused before a summary proceeding has few of the protections of a formal court, and the commanding officer who presides combines the roles of prosecutor, judge, and punishing authority in ways that would be constitutionally unacceptable in the civilian context.

6.2 The Rights of the Accused: Defence, Counsel, and Fair Process

The question of the rights of accused persons in the Bangladesh Air Force's military justice system is one of the most significant jurisprudential issues in the field. The Air Force Act, reflecting its colonial heritage, provides a framework of procedural protections that is less robust than that available in civilian criminal proceedings, particularly in the more summary forms of military proceedings.

In General Court Martial proceedings, the accused has the right to be represented. The practice of having a defending officer, an officer who acts on behalf of the accused in presenting the defence, is an important protection, but it raises the question of whether this protection is adequate. A defending officer may not be a legally qualified advocate. He may be an officer whose military duties create conflicts with the single-minded pursuit of his client's interests. The right to be represented by a legally qualified advocate, whether provided by the service or retained at the accused's own expense, is a fundamental element of the right to a fair trial that the constitutional framework demands.

The principle of audi alteram partem, hear the other side, is foundational to fair legal process in any jurisdiction. Its application in military justice proceedings requires that the accused be given adequate notice of the charges against him, an adequate opportunity to respond, access to the evidence on which the prosecution relies, the right to call witnesses in his defence, and the right to cross-examine witnesses called by the prosecution. These requirements are implicitly part of the Air Force Act's framework and are constitutionally mandated, but their practical

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implementation in the stress of military proceedings, particularly summary proceedings, is not always assured.

The presumption of innocence, another cornerstone of fair criminal process, applies in principle to military justice proceedings no less than to civilian criminal proceedings. An accused person must be treated as innocent until the charges against him are proven beyond reasonable doubt. The practical challenge in military justice proceedings is that the institutional environment within which they occur can make it difficult to maintain this presumption in practice. The accused may be confined prior to trial. He may be subjected to informal sanctions and command displeasure before any formal finding of guilt. The social dynamics of the institutional community may create a presumption of guilt that the formal legal presumption of innocence cannot overcome.

6.3 The Investigation of Offences: Command Inquiry and the Role of the Provost Marshal

The investigation of offences under the Air Force Act begins well before any formal court proceedings. The initial investigation is typically conducted at the commanding officer level, and the formal investigative process is governed by the Act and the rules made thereunder.

The Provost Marshal is the principal investigative officer in the air force legal system. The Act defines the provost marshal as a person appointed as such under the Act and includes any of his deputies or assistants or any other person legally exercising authority under him or on his behalf. The provost marshal is responsible for taking charge of persons confined for offences, preserving good order and discipline, preventing breaches of discipline, and carrying into effect punishments imposed by courts and commanders.

The investigative powers of the provost marshal and of commanding officers under the Act are substantial. They include powers of arrest, powers to take evidence, powers to compel witnesses, and powers to search premises. These powers are exercised in an institutional environment that differs significantly from the investigative environment of civilian police, and this difference has important implications for the rights of those investigated.

In civilian criminal investigation, there is a clear separation between the investigating authority (the police), the prosecuting authority, and the adjudicating authority (the court). This separation is a structural safeguard against conflicts of interest and against the abuse of investigative power. In military investigation, this separation is less clean. The commanding officer may be simultaneously the person who initiates an investigation, the person who determines whether to prefer charges, the convening authority for summary proceedings, and a significant influence on the institutional environment within which witnesses and evidence are located. This concentration of authority in the commanding officer is justified by reference to the requirements of military command, but it creates obvious risks of abuse and injustice.

The 2016 amendment to Bangladesh defence laws, and the ongoing development of service regulations and instructions, have sought to address some of these concerns by more clearly delineating investigative procedures and the rights of those under investigation. However, the fundamental structural tension between the command-based nature of military authority and the

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requirements of independent and fair investigation has not been resolved by these measures and remains a significant challenge.

6.4 The Mechanics of Court Martial Proceedings

A court martial proceeding under the Bangladesh Air Force Act follows a procedural sequence that is broadly comparable to a civilian criminal trial, though with important differences in detail. Understanding the procedural mechanics of court martial proceedings is essential for any practitioner or officer who may be involved in such proceedings.

The proceeding begins with the preferment of charges, the formal accusation that specifies the offence or offences with which the accused is charged. The charges must specify the particular act or omission alleged to constitute the offence, the provision of the Act under which it is charged, and other information necessary to give the accused fair notice of what he is alleged to have done. The specificity of the charge is a matter of legal significance: a charge that is too vague may be challenged on the ground that it fails to give the accused adequate notice.

Once charges are preferred, the convening authority decides whether to refer them to court martial or to dispose of them in some other way, such as by summary proceeding or administrative action. The convening authority's decision is a significant exercise of discretion that can profoundly affect the accused's situation. A decision to refer relatively minor charges to General Court Martial rather than dealing with them summarily may be motivated by a desire to secure a more severe punishment than summary proceedings allow, or by an intention to make an example of the accused, or by a genuine assessment that the seriousness of the conduct warrants formal court martial. Conversely, a decision not to refer serious charges to court martial may reflect improper protection of a favoured individual or an institutional desire to avoid the embarrassment of public proceedings.

The trial before a court martial follows a sequence that includes arraignment (the formal reading of the charges and the accused's plea), the examination of evidence, submissions and argument, the deliberation of the court on verdict, and the announcement of findings. If the accused is found guilty, a further procedure follows for the submission of evidence in mitigation and the determination of sentence.

The review and appeal process following a court martial finding is a critical element of the military justice system. The Act provides for review of court martial findings by superior authority, and there are provisions for further appeal. The adequacy of these review and appeal mechanisms is a matter of ongoing concern in military justice scholarship, as reviews conducted within the military hierarchy may not provide the degree of independence necessary to ensure genuine corrective oversight.

6.5 The Commander's Discretion and Its Legal Limits

One of the defining features of military justice systems worldwide is the significant role of command discretion in the determination of how disciplinary matters are handled. In Bangladesh Air Force law, as in comparable systems, the commanding officer exercises broad discretion at

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virtually every stage of the disciplinary process: in deciding whether to investigate an alleged offence, in deciding whether to prefer charges, in deciding what charges to prefer, in deciding whether to deal with a matter summarily or by court martial, and in the actual conduct of summary proceedings.

This command discretion is both the system's greatest strength and its greatest vulnerability. It is a strength because it allows the commanding officer, who knows the personnel and circumstances of his unit, to make context-sensitive judgments about how best to maintain discipline and morale. A commanding officer who understands that a particular act of misconduct reflects temporary stress rather than deep character deficiency, and who therefore chooses to deal with it informally rather than by formal punishment, is exercising a judgment that a formal legal system operating at a remove from the unit's day-to-day life cannot easily make.

But command discretion is also a vulnerability because it creates the possibility of arbitrary, inconsistent, and discriminatory exercise of disciplinary power. A commanding officer who dislikes a particular airman may treat his misconduct far more severely than comparable misconduct by a favoured subordinate. A commanding officer who feels personally affronted by an act of insubordination may prefer charges that are disproportionate to the offence. A commanding officer who belongs to a particular social, ethnic, or regional group may exercise his discretion in ways that systematically disadvantage personnel from other groups.

The legal limits on commanding officer discretion are important safeguards against these abuses. The Act sets out the punishments that can be imposed for various offences, establishing maximum penalties that cannot be exceeded. The requirement that charges be proven to the applicable standard of evidence before punishment is imposed limits the commanding officer's ability to punish without adequate basis. The review and appeal mechanisms provide a corrective for improper exercises of discretion. And the constitutional guarantee of equality before the law prohibits systematic discriminatory exercise of disciplinary power.

But these legal limits are not self-enforcing. They require active judicial oversight, active engagement by defending officers and legal advisers, and an institutional culture that takes the fair administration of justice seriously. The development of such a culture within the Bangladesh Air Force is an ongoing process, one that requires commitment at every level of the institution.

CHAPTER SEVEN: THE COMMAND-OBEDIENCE DIALECTIC: PHILOSOPHY, THEORY, AND THE LIMITS OF MILITARY AUTHORITY

7.1 The Philosophical Problem of Military Obedience

The relationship between military command and obedience is one of the most philosophically rich problems in the theory of military institutions. The nature and limits of the obligation to obey military orders, the moral status of the soldier who obeys an unlawful order, and the institutional mechanisms through which the line between lawful and unlawful orders is drawn,

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are questions that have occupied philosophers, legal scholars, and military professionals for centuries.

The traditional view of military obedience, which dominated military thinking and military law for most of recorded history, was essentially unconditional: the soldier's duty was to obey the commands of his superior, without question and without qualification. This view, sometimes called the automaton theory of military obedience, holds that the soldier is not a moral agent in the ordinary sense. His moral agency is subsumed in the moral agency of the commander. His responsibility for the consequences of orders he has carried out is diminished or extinguished by the fact of having received and obeyed a lawful command.

The automaton theory has deep roots in military tradition and in the practical requirements of military command. A military force that cannot rely on its personnel to carry out orders promptly and without hesitation is not a fighting force. The requirement for immediate obedience in the stress of combat, where delay caused by moral deliberation could cost lives, provides a powerful practical argument for unconditional obedience. And the principle that moral responsibility for the consequences of orders flows upward, to the person who gave the order rather than the person who executed it, provides a morally appealing basis for the soldier's position.

But the automaton theory was definitively discredited by the Nuremberg Trials following the Second World War. The Nazi war crimes, executed with military precision by soldiers who were "only following orders," demonstrated with terrible clarity the moral catastrophe that results when military obedience is treated as unconditional. The Nuremberg Tribunal held that soldiers are not mere automatons but are themselves moral agents, responsible for the consequences of their actions regardless of whether those actions were taken pursuant to orders. The principle that superior orders do not excuse participation in war crimes and crimes against humanity is now a settled principle of international law.

The recognition that military obedience has limits, that there are orders which must not be obeyed regardless of their source, has profound implications for military law, including Bangladesh Air Force law. It means that the Air Force Act, and the disciplinary framework it creates, must be understood in the light of the moral agency of the personnel who are subject to it. The obligation to obey orders under the Act is not unconditional. It is an obligation to obey lawful orders, orders that are within the commanding officer's authority and that do not require the commission of unlawful acts.

7.2 The Lawful Order Doctrine in Bangladesh Air Force Law

The Air Force Act creates an obligation to obey the lawful commands of superior officers. The word "lawful" is of enormous significance. It means that the obligation to obey is limited to commands that are within the authority of the commanding officer to give and that do not require the commission of acts that are illegal under the Act, under Bangladesh law, or under international law.

The determination of whether a command is lawful requires judgment. In the great majority of cases, the question does not arise: the commands given by commanding officers in the day-to-

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day operation of an air force are plainly within the officer's authority and do not require anything unlawful. But in extreme circumstances, the question can be urgent and difficult.

The Air Force Act does not contain a general provision explicitly exempting personnel from liability for disobeying unlawful orders. However, the doctrine that obedience to an unlawful order is not a defence to a charge of committing the unlawful act commanded, and conversely that disobedience to an unlawful order is not an offence, is well established in military law jurisprudence. It follows from the fundamental principle that the Act creates obligations to obey lawful orders, not orders of all kinds.

The practical challenge is that junior personnel often lack the information necessary to make a fully informed judgment about whether a command is lawful, and the institutional culture of the military places a very high premium on prompt, unhesitating obedience. The military officer or airman who pauses to question the legality of an order before carrying it out may face significant institutional consequences, even if the question is legitimate. The development of training programmes, institutional cultures, and legal advice mechanisms that support the ability of personnel to raise legitimate concerns about the legality of orders is therefore an important element of the rule of law within the military institution.

7.3 The Principle of Proportionality and the Rules of Engagement

The principle of proportionality, central to the laws of armed conflict, requires that the military force used in any engagement be proportionate to the legitimate military objective sought and not cause disproportionate harm to civilians or civilian objects. This principle is not merely a tactical concept. It is a legal obligation that applies to all members of the Bangladesh Air Force when deployed in armed conflict, whether internally or internationally.

The application of the proportionality principle is a matter of military legal training, ethical deliberation, and operational planning. For pilots and aircrew of the Bangladesh Air Force, the principle of proportionality is immediately relevant: the decision to attack a target, the selection of weapons, the determination of acceptable collateral damage, all these are decisions that must be made in conformity with the laws of armed conflict, including the proportionality principle.

Rules of Engagement (ROE) are the operational legal instruments through which the proportionality principle and other legal constraints on the use of force are translated into practical guidance for personnel in the field. ROE specify the circumstances under which force may be used, the types of force authorised, the targets that may be engaged, and the restrictions that apply. They are developed through a process that involves legal advice from judge advocates, operational planning by commanders, and policy direction from government authority.

The relationship between ROE and air force law is direct and important. Compliance with ROE is itself a legal obligation, breach of which may constitute an offence under the Air Force Act. But the relationship is more complex than simple command-obedience. ROE that are themselves inconsistent with the laws of armed conflict do not thereby become lawful: a rule of engagement

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that authorises the deliberate targeting of civilians, for example, would itself be unlawful, and compliance with it would not excuse the person who carried out the unlawful act.

7.4 Command Responsibility and Individual Criminal Liability

The doctrine of command responsibility holds that military commanders are legally responsible not only for the acts they personally commit but also for the acts of their subordinates in certain circumstances. Specifically, a commander is legally responsible for crimes committed by subordinates if he knew or should have known that subordinates were committing or about to commit crimes and failed to take the necessary and reasonable measures to prevent or punish them.

This doctrine, developed in the aftermath of the Nuremberg Trials and subsequently codified in the statutes of international criminal tribunals, including the International Criminal Court, applies to commanders of all ranks, from the most senior to the most junior. A flight commander who knew or should have known that his subordinates were mistreating detainees, and who failed to stop this mistreatment, bears legal responsibility for it even if he did not personally participate.

The command responsibility doctrine has significant implications for Bangladesh Air Force law and for the training and conduct of officers at every level. It means that the legal obligations of an Air Force officer extend beyond his own personal conduct to the conduct of those under his command. It means that officers must be attentive to what is happening within their commands, must establish systems for receiving complaints and concerns, must investigate allegations of misconduct, and must act decisively when misconduct is identified.

This doctrine is also relevant in the context of Bangladesh's participation in United Nations peacekeeping operations, in which Bangladesh Air Force personnel have participated. Peacekeeping personnel are subject to both their national military law and the relevant provisions of international humanitarian law and human rights law. The command responsibility principle applies in the peacekeeping context no less than in armed conflict, and Bangladeshi commanders have both legal and moral obligations to prevent misconduct by personnel under their command.

CHAPTER EIGHT: THE INTERACTION OF AIR FORCE LAW WITH CIVILIAN LAW: CONCURRENT JURISDICTION AND RELATED COMPLEXITIES

8.1 Concurrent Jurisdiction: The General Framework

One of the most practically significant and jurisprudentially complex aspects of Bangladesh Air Force law is the existence of concurrent jurisdiction between military courts and civilian courts over certain categories of offence. A member of the Bangladesh Air Force who commits what the Act calls a "civil offence," an act that would be criminal under ordinary law, may be tried either by a military court or by a civilian court. The choice between these two avenues is governed by provisions of the Act and by the exercise of discretion by the relevant authorities.

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The justification for concurrent jurisdiction is broadly pragmatic: it ensures that service members cannot escape accountability for serious civilian criminal conduct merely by reason of their military status, while also preserving the option for military trial in cases where there are good reasons to deal with the matter within the military justice system. The civilian courts, which have general jurisdiction over all persons within Bangladesh, retain their jurisdiction over service members even when the military courts also have jurisdiction.

In practice, concurrent jurisdiction is managed through a system of coordination and consultation between military and civilian authorities. The precedents established under comparable provisions of the Army Act provide useful guidance for the application of similar provisions of the Air Force Act.

The Supreme Court of Bangladesh has addressed the question of concurrent jurisdiction in cases arising under the Army Act, and the principles established in those cases are directly relevant to the Air Force Act. The court has held that when concurrent jurisdiction exists, the prescribed military officer has discretion to decide before which court proceedings shall be instituted, and that this discretion is a significant power that must be exercised responsibly and consistently with the relevant statutory provisions.

8.2 The Relationship Between the Air Force Act and the Penal Code

The Air Force Act explicitly incorporates the terminology of the Penal Code for words and expressions defined in that Code and not separately defined in the Act. This incorporation has significant implications: it means that the definitions and interpretive principles developed in relation to the Penal Code apply to the corresponding provisions of the Air Force Act.

The Penal Code's concepts of mens rea (criminal intent), of the mental elements of specific offences, of defences such as consent, necessity, and mistake of fact, and of the general principles of criminal liability, all inform the interpretation and application of the Air Force Act's offence provisions. A judge advocate advising on whether a particular act constitutes an offence under the Air Force Act must draw on both the specific provisions of the Act and the general principles of the Penal Code.

However, the relationship between air force law and the Penal Code is not one of simple incorporation. The Air Force Act creates specific military offences that have no exact civilian equivalent, and the interpretation of these offences must reflect their specifically military character. The offence of conduct to the prejudice of good order and discipline, for example, cannot be understood by reference to Penal Code concepts alone. It must be understood in the context of the institutional requirements of an air force, the standards expected of military personnel, and the established usages of the service.

8.3 Air Force Law and International Human Rights Law

The relationship between Bangladesh Air Force law and international human rights law is a dimension of the subject that has become increasingly important in recent decades and that is

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likely to become more important as Bangladesh's engagement with international human rights mechanisms deepens.

Bangladesh is a party to several key international human rights treaties, including the International Covenant on Civil and Political Rights (ICCPR). The ICCPR contains provisions directly relevant to the administration of military justice, including the right to a fair trial (Article 14), the right to be presumed innocent until proven guilty (Article 14(2)), the right to be informed of charges (Article 14(3)(a)), the right to adequate time and facilities to prepare a defence (Article 14(3)(b)), the right to be tried without undue delay (Article 14(3)(c)), and the right against self-incrimination (Article 14(3)(g)).

The UN Human Rights Committee, which monitors compliance with the ICCPR, has taken the position that the protections of Article 14 apply to military courts no less than to civilian courts. Bangladesh's military justice system, including the Bangladesh Air Force's disciplinary framework, must be evaluated against these international standards.

In practice, Bangladesh Air Force proceedings may not always meet the full requirements of Article 14, particularly in relation to summary proceedings and the rights of the accused in less formal disciplinary processes. The closing of this gap between international human rights standards and the practice of military justice is an important challenge for Bangladesh Air Force law reform.

Bangladesh's extensive participation in United Nations peacekeeping operations has also created a body of legal obligation and expectation in relation to the conduct of Bangladesh Air Force personnel abroad. UN peacekeepers are expected to comply with international humanitarian law, human rights law, and the UN's own conduct and discipline standards. The Bangladesh Air Force's legal framework must be adequate to enforce these obligations and to hold accountable those who violate them.

CHAPTER NINE: POLITICAL DIMENSIONS OF AIR FORCE LAW: CIVIL-MILITARY RELATIONS AND THE RULE OF LAW

9.1 Civil-Military Relations Theory and Its Application to Bangladesh

The academic field of civil-military relations theory provides an important framework for understanding the political dimensions of Bangladesh Air Force law. Civil-military relations theory is concerned with the appropriate relationship between the military institution and the civilian political order, with the mechanisms by which civilian authority is maintained over the military, and with the conditions under which this relationship is stable, healthy, and conducive to both effective military performance and democratic governance.

The classic statement of civil-military relations theory in the modern democratic tradition is found in the work of Samuel Huntington, whose book "The Soldier and the State" (1957) argued for what he called "objective civilian control" of the military: a relationship in which the military

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is allowed significant autonomy in its professional sphere in exchange for complete deference to civilian authority in the political sphere. On Huntington's account, the professional military officer is a servant of the state, expert in the management of violence but without political ambitions or ideological commitments. The healthy relationship is one in which civilian politicians govern and military officers fight, each respecting the other's sphere.

This model has been extensively criticised, not least for the historical unreality of the assumption that military professionals can be or should be entirely apolitical. The experience of Bangladesh, where military officers have repeatedly engaged in political activity and where the military establishment has at times exercised decisive political influence, provides a vivid illustration of the limits of the Huntingtonian model.

More recent civil-military relations theory, associated with scholars such as Peter Feaver and Eliot Cohen, has moved away from the sharp sphere-of-authority distinction of the Huntingtonian model toward a more complex understanding of the civil-military relationship as a relationship of ongoing negotiation, in which civilian principals must assert their authority actively and where military agents have both incentives to comply with civilian direction and incentives to resist it. On this account, civilian control is not a stable equilibrium achieved once and for all but an ongoing achievement that requires active maintenance.

Bangladesh Air Force law is a critical element of the civilian control apparatus. The constitutional provisions establishing civil authority over the armed forces, the legislative framework of the Air Force Act, and the administrative systems through which military personnel are held accountable are all mechanisms through which civilian authority is exercised over the Air Force. The adequacy of these mechanisms, and the degree to which they are actually effective in maintaining civil authority, are questions of the highest political and constitutional significance.

9.2 The Indemnity Laws and Their Implications for Air Force Law

Bangladesh has on several occasions enacted legislation providing indemnity for acts committed during periods of military governance or exceptional emergency. These indemnity provisions, which protect military personnel from legal liability for acts committed in purported exercise of military authority during specified periods, raise profound questions about the relationship between law, power, and accountability.

The indemnity laws are among the most controversial aspects of Bangladesh's legal history. On one hand, they reflect the pragmatic judgment that some degree of legal protection for those who acted in good faith during periods of exceptional difficulty is necessary to provide closure and to avoid perpetual legal instability. On the other hand, they raise serious concerns about the rule of law and about the principle that no one, including military personnel, should be above the law for serious misconduct, including violations of fundamental rights.

For Bangladesh Air Force law, the indemnity provisions have a direct significance. Acts committed by Air Force personnel in the exercise of authority during periods covered by indemnity legislation are, to the extent of the indemnity, not actionable in the courts. This

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exemption from ordinary legal accountability is a significant departure from the principle that military authority must be exercised within the rule of law, and it creates a zone of immunity that sits uncomfortably with constitutional values of accountability and the right to legal remedy.

The Bangladesh constitutional framework has engaged with these tensions in complex ways. The Constitutions (Fifteenth Amendment) Act, 2011 significantly modified some aspects of the constitutional framework relating to emergency powers and the legality of extra-constitutional changes of government. These constitutional changes have implications for the interpretation and application of indemnity provisions relating to past periods of military governance.

9.3 The Bangladesh Air Force in UN Peacekeeping: Legal Framework and Accountability

Bangladesh has been one of the most significant contributors to United Nations peacekeeping operations, with tens of thousands of personnel deployed in peacekeeping missions around the world. The Bangladesh Air Force has participated in these missions, contributing aircraft, crews, and support personnel to a variety of UN operations.

The participation of Bangladesh Air Force personnel in UN peacekeeping creates a complex legal framework that intersects Bangladesh Air Force law with international law, Status of Forces Agreements, UN Conduct and Discipline standards, and the laws of the host country. Understanding this legal framework is essential for any Air Force officer involved in peacekeeping deployments.

Bangladesh Air Force personnel participating in UN peacekeeping remain subject to Bangladesh Air Force law during their deployment. The Bangladesh Air Force Act continues to apply to them, and they remain subject to the disciplinary authority of their Bangladesh commanding officers. At the same time, they are bound by the applicable international humanitarian law, by the UN's own standards of conduct and discipline, and by the terms of the Status of Forces Agreement governing their deployment.

The UN's Conduct and Discipline framework requires that troop-contributing countries take disciplinary action against personnel who commit misconduct during UN deployments, and that they report investigations and their outcomes to the UN. Bangladesh has established procedures for investigating and prosecuting misconduct by peacekeeping personnel, drawing on the provisions of the Air Force Act and the Army Act. These procedures must satisfy both the requirements of Bangladesh military law and the expectations of the UN's accountability framework.

The accountability of Bangladesh Air Force personnel for misconduct during UN peacekeeping has been a matter of some international attention. Like all major troop-contributing countries, Bangladesh has faced scrutiny of its procedures for investigating and prosecuting alleged misconduct by its peacekeeping personnel. The adequacy of these procedures, measured against both domestic legal standards and international expectations, is an ongoing matter of institutional development.

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CHAPTER TEN: CONTROVERSIES AND UNSETTLED QUESTIONS IN BANGLADESH AIR FORCE LAW

10.1 The BDR Mutiny and Its Implications for Air Force Law

While not directly involving the Air Force, the Bangladesh Rifles (BDR) mutiny of February 25 and 26, 2009, in which members of the paramilitary Bangladesh Rifles killed dozens of Army officers attached to the force as commanding officers, had profound implications for the entire framework of Bangladesh military law, including Air Force law. The mutiny, one of the most horrific episodes in the history of Bangladesh's security forces, raised fundamental questions about military discipline, command authority, and the rule of law in the armed forces.

The legal proceedings that followed the mutiny were extraordinary in their scale and complexity. Thousands of BDR personnel were tried by both military courts and civilian criminal courts for their roles in the mutiny and the killings. The proceedings generated enormous controversy, including concerns about due process, the adequacy of the legal representation available to the accused, the consistency of the findings, and the proportionality of the punishments imposed.

For Bangladesh Air Force law, the BDR proceedings are a case study in the operation of the military justice system under extreme pressure. The sheer volume of proceedings, the political sensitivity of the events being tried, and the institutional imperative to demonstrate that military authority would be vindicated, all created conditions that were not conducive to the measured application of law. The experience raises important questions about the structural adequacy of Bangladesh's military justice system for handling mass proceedings, about the adequacy of defence resources available to accused in such proceedings, and about the review mechanisms available to correct errors.

10.2 The Question of Independent Military Legal Advice

One of the persistent controversies in Bangladesh Air Force law is the question of the independence of legal advice available to commanding officers and to those subject to disciplinary proceedings. In the contemporary international framework of military justice, there is increasing recognition that both commanding officers and accused persons need access to legally qualified, independent legal advice.

The role of the judge advocate, the legally trained officer who advises courts martial and commanding officers on legal questions, is central to the functioning of the military justice system. But the judge advocate's independence has always been a matter of some ambiguity. As a serving officer, the judge advocate is subject to the authority of the military hierarchy, including the authority of the commanding officers he advises. This creates a structural tension between the requirements of professional legal independence and the requirements of military subordination.

The Canadian Supreme Court addressed a related issue in R v Edwards (2024), holding that the status of military judges as both judges and military officers subject to legitimate military laws does not undermine their judicial independence, provided that adequate structural safeguards

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exist. The court's analysis is directly relevant to Bangladesh Air Force law: the question is not whether the judge advocate or military judge is a serving officer, but whether adequate structural protections exist to ensure that their legal advice and judicial decisions are free from improper command influence.

Bangladesh Air Force law does not contain explicit structural protections for the independence of the judge advocate function comparable to those found in some other Commonwealth military justice systems. This is a gap that military law reform should address.

10.3 Digital Technology, Cyber Offences, and the Air Force Act

The Air Force Act of 1953 was enacted in a world without computers, smartphones, social media, or cyberspace. The digital revolution has created forms of conduct, forms of communication, and forms of harm that were simply inconceivable when the Act was drafted. The challenge of applying a pre-digital legislative framework to a digital-age military environment is one of the most significant contemporary challenges in Bangladesh Air Force law.

The specific challenges are numerous. Social media use by Air Force personnel creates issues of information security, potential violations of official secrets, and the possibility of conduct prejudicial to good order and discipline through online behaviour. Cyber operations, including both offensive operations against adversary systems and defensive operations protecting Air Force communications and data, raise questions about the legal framework governing such activities and the accountability of personnel involved in them. The use of digital systems in military operations, from weapons guidance to logistics management to communications, creates new vulnerabilities and new categories of potential misconduct.

The Air Force Act's catch-all provision, conduct to the prejudice of good order and discipline, provides some basis for dealing with digital misconduct. But the vagueness of this provision is a particular concern when applied to genuinely novel forms of conduct, where the accused may not have had clear notice that his conduct was prohibited. There is a strong case for specific legislative or regulatory attention to the digital dimensions of Air Force conduct, providing clear guidance to personnel and clear authority for disciplinary action where appropriate.

The 2016 amendments to Bangladesh defence laws did not address digital issues, reflecting the general legislative lag in this area. Bangladesh's Digital Security Act (now revised as the Cyber Security Act) provides some framework for digital offences in the civilian context, but its interaction with the Air Force Act in cases involving Air Force personnel has not been systematically worked out.

10.4 Women in the Bangladesh Air Force: Legal Status and Remaining Challenges

The admission of women to commissioned service in the Bangladesh Air Force is a relatively recent development that has created new dimensions of air force law, including questions about the application of disciplinary provisions to female personnel, the adequacy of existing

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frameworks to address sexual harassment and misconduct directed at female personnel, and the treatment of pregnancy and related matters in the context of military service.

The Air Force Act does not contain gender-specific provisions, reflecting its origin in a time when the Air Force was exclusively male. Its application to female personnel requires interpretation and adaptation. The commanding officer's authority to impose summary punishments, for example, applies to female personnel no less than male, but the practical exercise of this authority in relation to female personnel raises questions about privacy, dignity, and the gender-specific impacts of certain forms of military discipline.

The question of how the Air Force legal framework addresses sexual harassment and sexual assault directed at female personnel is a matter of acute contemporary importance. In the United States, the Military Justice Improvement Act (2021) and subsequent reforms removed certain sexual offences from commanding officer discretion and placed them under special trial counsel, reflecting the recognition that the command-based structure of military justice creates conflicts of interest that compromise accountability for sexual misconduct. Similar reforms have been implemented in other countries.

Bangladesh Air Force law has not yet engaged systematically with this reform agenda, though the issue is directly relevant given the increasing participation of women in the service. The development of clear, accessible, and independent reporting mechanisms for sexual misconduct, adequate investigation procedures, and fair trial processes for both accused and complainants, is an urgent priority for Bangladesh Air Force law reform.

CHAPTER ELEVEN: RECENT DEVELOPMENTS AND EMERGING TRENDS IN MILITARY LAW: GLOBAL CONTEXT AND IMPLICATIONS FOR BANGLADESH

11.1 The Global Military Justice Reform Movement

The past decade has witnessed a sustained global movement for the reform of military justice systems, driven by a combination of constitutional developments, international human rights jurisprudence, feminist advocacy, and the increasing recognition that the integrity of military institutions depends on the integrity of their justice systems.

In Canada, the Supreme Court's 2024 decision in R v Edwards, addressing the judicial independence of military judges, represents a significant moment in this ongoing development. The court's holding that military judges must be independent and impartial in the same constitutional sense as civilian judges, while acknowledging the distinctive features of the military context, is a landmark of military justice jurisprudence. It reflects the broader principle that constitutional rights do not have a military exception but must be interpreted and applied in ways that are appropriate to the military environment.

In the United States, the Military Justice Improvement Act debates and the subsequent modifications to the Uniform Code of Military Justice have addressed the handling of sexual

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offences, the role of Special Trial Counsel, and other significant procedural reforms. The 2024 Manual for Courts-Martial reflects these ongoing developments and provides updated guidance for the US military justice system. The US experience of reform, while specific to its constitutional and institutional context, provides important lessons for Bangladesh Air Force law: the recognition that the balance between command authority and individual rights requires constant recalibration, and that effective military justice requires both institutional independence and command accountability.

In the United Kingdom, the Armed Forces Act of 2021 continued the process of reform initiated by the 2006 Armed Forces Act, addressing service complaints, statutory duty of care, and other matters. The UK's experience of developing a single military justice system that applies across the Army, Royal Navy, and Royal Air Force is particularly relevant for Bangladesh, given the shared Commonwealth heritage of the legal frameworks.

Australia's military justice reforms, following extensive public inquiries into misconduct in the Australian Defence Force and into the system's handling of complaints, have produced significant legislative and administrative changes. The Brereton Report on alleged war crimes by Australian special forces in Afghanistan, released in 2020, has had ongoing legal and institutional consequences. While this report addressed conduct in armed conflict rather than domestic military justice, its implications for the accountability of military personnel and the adequacy of military investigation and justice processes have broader relevance.

11.2 International Humanitarian Law: Recent Developments and BAF Implications

International humanitarian law (IHL) has continued to develop in response to the changing character of armed conflict. The emergence of autonomous weapons systems, the increasing use of drones and unmanned aerial vehicles in military operations, the growing significance of cyber warfare, and the complex character of contemporary armed conflicts in which state and non-state actors interact in multiple legal frameworks, have all generated active legal scholarship and institutional response.

For the Bangladesh Air Force, these developments in IHL have direct practical significance. As the BAF modernises its equipment and capabilities, including through the acquisition of more sophisticated aircraft and the potential future development of drone capabilities, the IHL framework governing the use of these capabilities becomes directly relevant to the legal training and operational planning of the force.

The question of autonomous weapons is particularly significant. There is active international debate about whether fully autonomous weapons systems, weapons that can select and engage targets without meaningful human control, are consistent with IHL. The principle of distinction, requiring that parties to an armed conflict distinguish between combatants and civilians, and the principle of proportionality, requiring proportionate force, are both potentially at risk from fully autonomous weapons that cannot exercise the human judgment necessary to apply these principles. Bangladesh has engaged with these debates through its participation in international forums, and the Bangladesh Air Force's legal framework must ultimately address the question of how these principles apply to emerging weapons technologies.

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The protection of civilians in air operations is a long-standing concern of IHL, addressed in the Additional Protocols to the Geneva Conventions (1977). The Bangladesh Air Force, as a force that may be called upon to conduct air operations in support of internal security or in the context of international deployments, must ensure that its operational doctrine and legal training are fully consistent with IHL's requirements for the protection of civilians.

11.3 Drone Technology, Electronic Warfare, and Legal Accountability

The proliferation of drone technology represents one of the most significant changes in the character of military aviation since the invention of the aircraft itself. Drones, or Unmanned Aerial Vehicles (UAVs), have become integral to the military capabilities of a growing number of armed forces worldwide, used for reconnaissance, surveillance, target acquisition, and in some cases direct attack.

For the Bangladesh Air Force, the legal framework governing drone operations raises novel and important questions. The use of armed drones for attack purposes, where permitted, raises IHL questions about the identity and status of targets, the proportionality of attacks, the precautions required in targeting, and the accountability of operators and commanders for the consequences of drone strikes.

The physical separation between the drone operator and the operational environment creates new challenges for the application of legal standards that were developed with the assumption of physical presence. A drone operator sitting at a control station in Bangladesh may be conducting operations in a different country, in a different legal environment, with different rules of engagement. The accountability of that operator, and of the commanders who authorised the operation, for any IHL violations that occur, is governed by a legal framework that is still being developed by scholars, states, and international institutions.

Bangladesh Air Force law does not yet contain specific provisions governing drone operations, and the application of existing legal frameworks to this context requires careful interpretation. The development of specific guidance, whether in the form of legislative amendment, service regulation, or operational instructions, is an important priority as drone technology becomes more central to military aviation.

11.4 AI in Military Operations: Emerging Legal Questions

Artificial intelligence is beginning to transform military operations in ways that have profound legal implications. AI systems are being used for intelligence analysis, target recognition, logistics optimisation, cybersecurity, and a range of other military functions. The question of how existing military law frameworks, including Bangladesh Air Force law, apply to AI-assisted or AI-directed military actions is a question that is only beginning to receive systematic attention.

The fundamental legal challenge posed by AI in military operations is the challenge of accountability: when an AI system makes a decision that results in harm, who is legally responsible? The commanding officer who authorised the use of the system? The operator who

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deployed it in a specific situation? The institution that procured and fielded it? The manufacturer that designed it? These questions do not have settled answers in existing military law frameworks, and they will require sustained jurisprudential attention as AI becomes more central to military operations.

For Bangladesh Air Force law, the engagement with AI raises both immediate and longer-term questions. In the immediate term, the use of AI-assisted systems in Air Force operations, whether for maintenance scheduling, operational planning, or threat assessment, raises questions of accountability and responsibility that existing legal frameworks were not designed to address. In the longer term, the possibility of AI playing a more direct role in targeting and weapons deployment raises the most serious questions of IHL and military accountability.

CHAPTER TWELVE: THE ETHICS OF AIR FORCE SERVICE AND THE MORAL DIMENSIONS OF AIR FORCE LAW

12.1 Military Ethics and Its Relationship to Air Force Law

Military ethics is the branch of applied ethics that addresses the moral dimensions of military service, military operations, and military institutions. It is closely related to, but distinct from, military law: while military law prescribes what is legally required and prohibited, military ethics addresses what is morally required and prohibited, which extends beyond legal obligation.

The relationship between military ethics and air force law is one of mutual influence and mutual reinforcement. Air Force law embodies certain ethical principles: the principle of duty, the principle of obedience to lawful authority, the principle of fairness in discipline, the principle of proportionate punishment, and the principle of accountability for misconduct. These are not merely legal principles. They are moral principles that the law reflects and reinforces. At the same time, military ethics provides a standard against which the law can be evaluated: a provision of air force law that requires conduct that is morally impermissible, or that exempts from legal accountability conduct that is morally required, is a provision that stands in need of reform.

The professional military ethics of the Bangladesh Air Force draws on multiple traditions: the traditions of Muslim ethics that are deeply embedded in Bangladeshi culture, the traditions of professional military ethics developed in the post-independence training of the service, and the international traditions of military professional ethics that inform training at staff colleges and through participation in international military cooperation.

One of the most important dimensions of professional military ethics for air force service is the ethics of the warrior: the code that governs the conduct of those who are trained to apply lethal force in the service of the state. This code requires courage, but it also requires restraint: the warrior who fights effectively and who fights within the law is a very different figure from the warrior who fights without restraint. The Air Force Act's offence provisions, its requirements of

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good order and discipline, and its incorporation of the laws of armed conflict through the civil offences framework, all reflect this ethical dimension of professional military service.

12.2 Honour, Reputation, and the Conduct Unbecoming Provisions

The concept of conduct unbecoming an officer has been part of military law since at least the seventeenth century, and it reflects a conception of military service as a profession of honour in which personal character and reputation are matters of institutional concern. The Air Force Act, following the tradition of military law, includes provisions relating to conduct unbecoming that extend the reach of military discipline beyond acts that are directly harmful in an operational sense to acts that are harmful to the reputation and honour of the service.

The philosophical foundation of the conduct unbecoming concept is the idea that military officers are not merely employees carrying out defined tasks. They are members of a profession with a distinctive ethos, and their personal conduct, both in their official capacity and in their private lives, reflects on that ethos and on the institution they represent. An officer who behaves dishonourably in his private life, whether through dishonesty, cruelty, moral cowardice, or other conduct that the professional military community regards as unworthy, has failed his professional obligation even if he has technically violated no specific statutory provision.

This concept is both powerful and problematic. It is powerful because it captures something important about the nature of military professionalism: that the officer's character, not merely his technical compliance with specific rules, is a matter of professional and institutional concern. It is problematic because it creates a zone of legal accountability that is defined by reference to community standards that may be unclear, inconsistently applied, and subject to the influence of prejudice and institutional politics. The conduct unbecoming provision is, by its nature, a provision that requires judgment, and judgment can be wrong, biased, or corrupt.

The appropriate response to this tension is not to eliminate the conduct unbecoming concept but to develop clearer standards and more robust procedural protections for cases arising under it. The development of official guidance on the kinds of conduct that do and do not fall within the concept, the application of due process protections in proceedings under the provision, and the development of appeal mechanisms that provide meaningful review, are all important elements of a fair and lawful application of this dimension of air force law.

12.3 Conscience, Conscientious Objection, and the Limits of Military Obligation

The question of conscientious objection to military service, or to specific forms of military service, is one that most established armed forces have had to grapple with at some point. The Bangladesh Air Force, operating in a constitutional democracy with a guarantee of freedom of religion and conscience under Article 41 of the Constitution, must have some framework for engaging with the possibility that personnel may develop conscientious objections to specific duties.

The Air Force Act, as a legislative product of a different era, does not address conscientious objection explicitly. The tradition of military law, in its strictest form, does not recognise

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conscientious objection as a ground for refusing lawful orders or as a defence to a charge of disobedience. The military obligation, on this view, is unconditional within its legal scope.

However, the constitutional guarantee of freedom of conscience, and the international human rights standards that recognise conscientious objection to military service as a manifestation of freedom of thought, conscience, and religion, create a framework within which the absolutism of the traditional military view cannot be maintained without qualification. The UN Human Rights Committee has recognised that conscientious objection to military service is protected by Article 18 of the ICCPR, and has called on states to provide for conscientious objection procedures that do not discriminate against those with conscientious objections.

For the Bangladesh Air Force, the practical question is most likely to arise not in relation to the rejection of military service altogether but in relation to specific duties that a member of the service finds morally unacceptable: participation in operations that he believes to violate international humanitarian law, performance of duties that conflict with specific religious obligations, or other context-specific conflicts between military obligation and personal conscience.

The development of institutional procedures for addressing conscientious claims fairly, that take seriously both the military's need for reliable performance of duty and the individual's right to freedom of conscience, is an important element of the development of Bangladesh Air Force law in the contemporary period.

CHAPTER THIRTEEN: INVESTIGATION, EVIDENCE, AND FORENSIC DIMENSIONS OF AIR FORCE LAW

13.1 The Law of Evidence in Military Proceedings

The rules of evidence that apply in court martial proceedings are a critical element of the fair administration of military justice. Evidence law governs what information may be placed before the court, how it must be presented, what weight it may receive, and what procedural protections apply to those whose interests are affected by its admission or exclusion.

Bangladesh Air Force law does not contain a comprehensive self-contained code of evidence for military proceedings. Instead, it draws on the general law of evidence as it applies in Bangladesh, principally the Evidence Act of 1872, adapted to the specific requirements of military proceedings. The Evidence Act establishes general principles of relevance, admissibility, and proof that apply in criminal proceedings generally, and these principles apply in court martial proceedings subject to any specific provisions of the Air Force Act and the rules made thereunder.

The application of the Evidence Act's principles to military proceedings raises a number of specific issues. The Act's provisions relating to the admissibility of confessions are particularly important in the military context, where the institutional environment and the dynamics of

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command authority may create conditions that render confessions inherently suspect. A confession made by a junior airman in the presence of a commanding officer, or in the context of an investigative process in which the accused has been led to believe that confession will result in lenient treatment, may not satisfy the voluntariness requirement that the Evidence Act imposes.

The rule against hearsay, which limits the admission of out-of-court statements as evidence of the truth of their contents, applies in military proceedings as in civilian proceedings, subject to the established exceptions. In military proceedings, particular issues arise in relation to statements made in the course of official investigations, reports of superior officers, and documentary evidence of operational activities. The proper treatment of these forms of evidence is a matter that requires careful attention in military proceedings.

Digital evidence presents a growing challenge for the law of evidence in military proceedings. Communications on social media, electronic messages, operational data from aircraft systems, and other forms of digital evidence may be relevant to proceedings under the Air Force Act, and the framework for their admissibility, authentication, and interpretation needs to be developed in Bangladesh Air Force law, as it does in civilian law.

13.2 The Investigation of Aircraft Accidents: Legal and Forensic Dimensions

Aircraft accident investigation is a specialised domain that intersects air force law in important ways. When a Bangladesh Air Force aircraft is involved in an accident, whether on the ground or in the air, an investigation is required both to determine the cause of the accident and to assess whether any personnel are responsible for conduct that contributed to it.

The investigation of military aircraft accidents involves multiple overlapping frameworks: the technical investigation of the accident, which is concerned with determining cause and preventing recurrence; the administrative investigation, which is concerned with assessing institutional lessons and improving procedures; and the disciplinary investigation, which is concerned with determining whether any person's conduct constituted an offence under the Air Force Act.

The relationship between these different investigation frameworks is a matter of some complexity. The technical investigation requires that witnesses feel free to provide complete and honest information about what happened, without fear that their statements will be used against them in disciplinary proceedings. The creation of protected environments for safety investigation, in which information provided for safety purposes is not available for use in disciplinary proceedings, is a well-established principle of aviation safety regulation in the civilian context and has been adopted in the military context in various forms by different armed forces.

For Bangladesh Air Force law, the development of an adequate framework for military aircraft accident investigation, one that provides effective safety investigation while maintaining appropriate disciplinary accountability, is an important priority. The tension between safety investigation and disciplinary investigation is real and must be managed carefully.

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13.3 Forensic Medicine and Air Force Law

Forensic medicine plays an important role in military justice proceedings, particularly in cases involving death, injury, sexual misconduct, and the fitness for duty of personnel. The role of the medical officer in both providing treatment and giving evidence in disciplinary proceedings is a dimension of Air Force law that requires careful attention to the ethical and legal principles governing medical practice.

The medical officer's evidence in court martial proceedings is subject to the general rules of evidence and to specific principles governing expert evidence. A medical officer who provides evidence about the physical condition of a victim of alleged assault, the cause of death in a case of alleged homicide, or the mental state of a person accused of an offence, must provide that evidence in a form that meets the requirements of court proceedings, including the requirement of objectivity and the requirement to acknowledge the limits of the expert's knowledge.

The ethical dimension of the medical officer's role in military justice is particularly complex because the medical officer occupies multiple institutional positions simultaneously: as a healer obligated to patient confidentiality and the patient's best interests, as a military officer subject to command authority, and as a potential witness in disciplinary proceedings. The management of these potentially conflicting obligations requires clear institutional guidance and strong ethical training.

CHAPTER FOURTEEN: THE FUTURE OF BANGLADESH AIR FORCE LAW: REFORM, MODERNISATION, AND THE PURSUIT OF JUSTICE

14.1 The Case for Comprehensive Legislative Reform

The foregoing analysis of Bangladesh Air Force law, its history, its philosophy, its structure, and its challenges, leads to a clear conclusion: the Air Force Act of 1953, while functionally adequate for the routine administration of military discipline, is in need of comprehensive legislative reform to bring it into alignment with contemporary constitutional standards, international human rights norms, and the operational requirements of a modern air force.

The case for reform is not a case against the Air Force Act or against the institution of military law. It is a case for taking military law seriously enough to subject it to the same rigorous scrutiny and continuous development that we expect from civilian law. The Air Force Act of 1953 was a product of its time, inheriting the legislative traditions of colonial British military law and adapting them to the new national context of Pakistan and subsequently Bangladesh. Seventy years later, those traditions need to be re-examined, not abandoned, in the light of seventy years of constitutional development, jurisprudential scholarship, and institutional experience.

The key elements of a comprehensive reform programme for Bangladesh Air Force law would include: a codified and explicit statement of the rights of accused persons in all military proceedings, including the right to legal representation, the right to a fair hearing, and the right

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against self-incrimination; the establishment of structural protections for the independence of military legal advisers and adjudicators; the development of specific provisions addressing digital conduct, cyber operations, and the use of emerging technologies; the modernisation of the offence framework to address contemporary challenges, including sexual harassment and assault, while maintaining clear and specific definitions that give adequate notice of what conduct is prohibited; the reform of the investigation framework to provide more robust protections for those under investigation; and the development of an appeal mechanism that provides effective independent review of military justice decisions.

14.2 The Role of the Bangladesh Air Force in Developing Its Own Legal Culture

The reform of Bangladesh Air Force law is not solely a matter for the legislature. The Bangladesh Air Force itself has a crucial role to play in the development of a legal culture within the institution that takes the rule of law seriously, that treats the rights of personnel with genuine respect, and that sees the fair administration of justice as an essential element of professional military excellence.

The development of a strong legal culture within the Air Force requires investment in legal education and training at all levels. Officers must understand not just the technical provisions of the Air Force Act but the philosophical foundations of military law, the constitutional constraints on military authority, and the ethical dimensions of military decision-making. Non-commissioned officers and airmen must understand their rights and obligations under the Act and have access to channels through which they can raise legal concerns without fear of institutional retaliation.

The role of the judge advocate corps in developing this legal culture is central. Judge advocates, as the legally qualified professionals of the service, bear a special responsibility for promoting the rule of law within the institution. This responsibility extends beyond advising commanding officers on specific legal questions to the broader function of institutional legal education, policy development, and the active promotion of a culture of lawfulness throughout the Air Force.

The development of a legal culture within the Bangladesh Air Force is consistent with the highest traditions of professional military service. An Air Force that takes its legal obligations seriously, that administers discipline fairly and in accordance with law, and that holds its personnel accountable for misconduct while protecting their rights as persons and as citizens, is an Air Force that is worthy of the trust and pride of the nation it serves.

14.3 Bangladesh Air Force Law in a Regional and Comparative Perspective

A comparative perspective on Bangladesh Air Force law, considering how it relates to the military justice systems of neighbouring and comparable countries, is both intellectually enriching and practically useful. The military law frameworks of India, Pakistan, Sri Lanka, and other Commonwealth countries in the South Asian region share significant common heritage with Bangladesh Air Force law and have developed in ways that may offer useful lessons.

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India's military justice system has undergone significant development since independence, including through judicial decisions of the Supreme Court and High Courts that have applied constitutional standards to military proceedings. The Supreme Court of India has, in several landmark decisions, held that the constitutional guarantee of equality and the fundamental right to life and personal liberty apply to members of the armed forces, and that military courts must satisfy constitutional standards of fair procedure. These decisions provide important comparative guidance for the development of Bangladesh Air Force law jurisprudence.

Pakistan's military justice system has been shaped by its own constitutional history, including periods of military governance that have left complex institutional legacies. The development of judicial oversight of military decisions in Pakistan provides another set of comparative examples for Bangladesh.

Sri Lanka's military justice system, reformed in the aftermath of its long civil conflict, provides yet another comparative perspective. Sri Lanka's experience of military operations in the context of internal armed conflict, and the subsequent accountability processes, offers lessons about the relationship between military law, operational reality, and the requirements of accountability in the aftermath of conflict.

The comparative perspective reminds us that Bangladesh Air Force law is not an isolated system but part of a family of military law frameworks that share common ancestry and face common challenges. Learning from the experience of comparable systems, adapting useful innovations to the Bangladeshi context, and contributing Bangladesh's own experience to the development of regional and international standards of military justice, are all important dimensions of the ongoing development of Bangladesh Air Force law.

CHAPTER FIFTEEN: CONCLUSION TO PART ONE: THE LIVING TRADITION OF BANGLADESH AIR FORCE LAW

15.1 The Synthesis: What We Have Learned

The analysis developed in the preceding fourteen chapters of this first part of the handbook leads to a number of conclusions that deserve to be drawn together in a concluding synthesis.

First, Bangladesh Air Force law is a rich and complex domain of legal knowledge that deserves sustained intellectual engagement. It is not merely a technical system of rules for maintaining discipline within an institution. It is a legal tradition rooted in deep history, shaped by colonial inheritance, transformed by the experience of national liberation, and continuously challenged by the demands of constitutional democracy, international human rights standards, and technological change.

Second, the philosophical foundations of Bangladesh Air Force law are multiple and sometimes in tension. The natural law tradition reminds us that military law must conform to the fundamental demands of justice and human dignity. The positivist tradition reminds us that law

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is what it is, and that practical application requires knowing what the law actually provides. Dworkin's interpretive approach reminds us that applying law requires understanding its purposes and principles, not merely its text. The critical legal tradition reminds us that law reflects power as well as principle, and that vigilance against abuse is a permanent requirement.

Third, the constitutional framework within which Bangladesh Air Force law operates is not merely a formal constraint but a substantive source of values and standards. The Constitution's guarantees of fundamental rights apply to service personnel, and the interpretation and application of the Air Force Act must be consistent with these guarantees. The development of a robust jurisprudence of constitutional rights within the military context is an important and unfinished project for Bangladesh.

Fourth, the history of Bangladesh Air Force law is a history of inherited frameworks, dramatic founding moments, periods of political stress, and gradual adaptation. Understanding this history is essential to understanding the law as it currently exists and to developing it appropriately for the future. The colonial inheritance is real and must be acknowledged. The founding experience of the liberation war is profound and must be honoured. The challenges of military governance are complex and must be engaged with honestly.

Fifth, the future of Bangladesh Air Force law depends on the commitment of the institution and its members to the values of justice, fairness, and the rule of law. Legal reform is necessary but not sufficient. What is most important is the development of a legal culture within the Bangladesh Air Force that treats these values not as external constraints to be minimised but as essential elements of professional military excellence.

15.2 A Note on Method and the Organisation of the Remaining Parts

This first part of the handbook has provided the foundations: philosophical, historical, constitutional, and analytical, upon which the remaining parts will build. The second part will deal in detail with the specific offence provisions of the Air Force Act, examining each major category of offence in depth. The third part will address the structure and procedure of courts martial and summary proceedings. The fourth part will examine the rights of accused persons and the procedural protections available in military justice proceedings. The fifth part will address the interaction of air force law with civilian law and international law. The sixth part will examine the specific challenges of air force law in operational deployments, including UN peacekeeping. The seventh part will address the legal framework for air force operations, including ROE, the laws of armed conflict, and the emerging legal questions of autonomous systems and cyber warfare. The eighth part will address administrative law within the air force, including service conditions, promotions, discharges, and service complaints. The ninth part will address the legal dimension of air force human resource management, training, and institutional development. The tenth part will offer a comprehensive view of the reform agenda and the future direction of Bangladesh Air Force law.

Together, these ten parts will constitute a comprehensive handbook for Air Force officers, legal professionals, and scholars engaged with one of the most important and underexplored domains of Bangladeshi law. The aim throughout is not merely to describe the law as it is but to engage

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with it as a living tradition, capable of development, worthy of critical scrutiny, and ultimately in service of the highest values of professional military service and constitutional democracy.

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End of Part One

Editorial Note: Part Two of this handbook will proceed to a detailed, section-by-section analysis of the offence provisions of the Air Force Act, 1953, examining the definitions of specific offences, the elements of proof required for each, the maximum punishments applicable, and the jurisprudential controversies surrounding the interpretation and application of each major provision. It will draw on the analytical framework established in Part One and will apply the philosophical and historical insights developed therein to the specific legal questions that arise in the daily practice of air force law.

The author dedicates Part One to the men and women of the Bangladesh Air Force who have served, in peace and in conflict, in the conviction that the rule of law and the pursuit of justice are not the enemies of military effectiveness but its deepest foundations.

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This handbook is intended as an educational and scholarly resource. It does not constitute legal advice. Officers seeking guidance on specific legal questions arising in the course of their duties should consult the legally qualified advisers of the Bangladesh Air Force.

PART TWO

THE OFFENCE PROVISIONS OF THE BANGLADESH AIR FORCE ACT, 1953: A JURISPRUDENTIAL, ANALYTICAL, AND COMPARATIVE COMMENTARY

PREFATORY NOTE TO PART TWO

Part One of this handbook laid the philosophical foundations, historical architecture, and constitutional framework within which Bangladesh Air Force law operates. It traced the deep genealogy of military law from the legions of Rome to the colonial dispensation of the British Indian Army, from the founding heroism of 1971 to the contemporary challenges of constitutional democracy, technological change, and international human rights standards. It introduced the reader to the major theoretical frameworks through which military law may be understood and offered a sustained engagement with the questions of legitimacy, authority, obedience, and justice that lie at the heart of the military legal enterprise.

Part Two now moves from foundations to substance. Its concern is with the specific offence provisions of the Air Force Act of 1953, the substantive criminal law of Bangladesh Air Force jurisdiction. These provisions define what conduct is prohibited, what elements must be proved to establish guilt, what punishments may be imposed, and what philosophical and jurisprudential controversies attend each major category of offence. This is not a dry technical exercise. Each offence provision, when examined with sufficient depth and intellectual seriousness, opens onto profound questions about the nature of military authority, the limits of obedience, the meaning of loyalty, the ethics of cowardice, the justification of punishment, and the relationship between institutional discipline and individual conscience.

The analysis proceeds by way of detailed examination of each major offence category, drawing on the text of the Air Force Act, the broader legal context in which it operates, comparative examples from other military law systems, philosophical and jurisprudential commentary, and the emerging challenges posed by technological change, geopolitical transformation, and evolving standards of constitutional and international law. Throughout, the reader is invited to bring critical intelligence to the material, to ask not merely what the law provides but whether what it provides is just, coherent, constitutionally sound, and adequate to the institutional and operational requirements of a modern air force in the twenty-first century.

It is important at the outset to acknowledge a methodological point. The Air Force Act of 1953 is not a code that provides elaborate explanations or justifications for its provisions. Like most military legislation in the common law tradition, it states its rules with economy and expects practitioners to supply the interpretive substance through training, professional judgment, and reference to the accumulated wisdom of military legal practice. This handbook undertakes the

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work of supplying that interpretive substance, drawing on jurisprudential scholarship, comparative military law, and the constitutional framework that must inform every serious reading of the Act.

CHAPTER SIXTEEN: THE THEORETICAL FRAMEWORK OF MILITARY OFFENCES: NATURE, CLASSIFICATION, AND PHILOSOPHY

16.1 What Is a Military Offence? Foundational Distinctions

The concept of a military offence is one of the most philosophically interesting and practically important concepts in military jurisprudence, yet it is one that practitioners frequently employ without the reflective engagement it deserves. A military offence, in the most general sense, is an act or omission that the law subjects to penal sanction within the framework of the military justice system. But this general definition immediately raises questions that deserve careful examination.

The first question is about distinctiveness. What makes a military offence different from a civilian criminal offence? This is not merely a question of procedural jurisdiction, of which court hears the case or which tribunal imposes punishment. It is a question about the substantive character of what is prohibited. Some offences under the Air Force Act are offences that would also constitute crimes under civilian law: assault, theft, fraud, and murder are offences in any legal system. But many offences under the Air Force Act have no civilian counterpart whatsoever. Desertion, mutiny, insubordination to a superior officer, cowardice in the face of the enemy, disobedience to a lawful command, conduct prejudicial to good order and air force discipline: these are categories of prohibited conduct that make sense only within the specific institutional and operational context of military service.

This distinction between offences that are merely common crimes that happen to occur in a military context and offences that are genuinely sui generis to military life is one of the foundational distinctions in the theoretical analysis of military criminal law. The distinction matters for several reasons. It matters for the question of jurisdiction, because there are strong arguments that genuinely military offences, those whose character is entirely defined by the military relationship, belong exclusively within military jurisdiction, while common crimes committed by military personnel should be subject to the same civilian processes that would apply to any other person. It matters for the question of constitutional rights, because the justification for departing from civilian constitutional norms in military proceedings is strongest when the offence in question is genuinely military in character and weakest when it is simply a common crime dressed in a uniform. And it matters for the question of punishment, because the logic of military punishment, concerned with maintaining discipline and operational effectiveness, applies most naturally to genuinely military offences and applies more awkwardly to common crimes.

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The Air Force Act of 1953 contains both kinds of offences, genuinely military offences and military jurisdiction over common crimes, and understanding which kind one is dealing with is an important first step in any analytical engagement with the offence provisions.

16.2 The Classification of Offences Under the Air Force Act

The offence provisions of the Air Force Act are organised in a way that reflects both their historical origins in British military law and the specific operational concerns of an air force. For analytical purposes, it is useful to organise these provisions into several broad categories, bearing in mind that any classification scheme involves simplification and that individual offence provisions may straddle more than one category.

The first category comprises offences against military authority: those provisions that prohibit attacks on the foundations of the command structure itself. These include mutiny, sedition, incitement to mutiny, and insubordination. These are the offences that most fundamentally threaten the institutional integrity of the Air Force, since they strike at the very obedience and hierarchy on which military organisation depends.

The second category comprises absence offences: those that deal with the failure of personnel to be present where the institution requires them to be. Desertion, absence without leave, and related offences fall in this category. These are among the most frequently prosecuted military offences, and they raise interesting questions about the nature of the service relationship and the moral character of absence in different circumstances.

The third category comprises operational offences: those that deal with the behaviour of personnel in or near combat or other operational situations. Cowardice, misbehaviour before the enemy, disobeying orders in operational contexts, and related offences fall here. These are perhaps the most philosophically charged category, raising fundamental questions about courage, fear, the limits of what can be demanded of human beings, and the moral status of combat.

The fourth category comprises offences involving dishonesty: fraud, false statements, forgery, and related conduct. These are particularly important in the air force context because of the safety implications of dishonesty in the reporting of aircraft maintenance, flight operations, and technical procedures.

The fifth category comprises offences of negligence and dereliction: failures to perform duties, negligent performance of watchman functions, and related conduct that falls short of the standard of diligence required of service personnel.

The sixth category comprises conduct prejudicial to good order and air force discipline: the broad, catch-all provision that has been the subject of extensive jurisprudential controversy but which serves an important residual function in the military justice system.

The seventh category comprises civil offences committed by persons subject to the Act: the extension of military jurisdiction over common crimes committed by service personnel.

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This categorisation provides the analytical structure for the chapters that follow. But before descending to the detail of individual offences, it is necessary to engage with a number of theoretical questions that cut across all categories.

16.3 The Jurisprudence of Military Punishment: Why Do We Punish in the Military Context?

The question of why punishment is justified is one of the oldest and most contested in moral philosophy and jurisprudence. In the civilian context, the major theories of punishment, retributivism, deterrence, incapacitation, rehabilitation, and expressivism, are well known and well debated. In the military context, these theories apply in modified and sometimes distinctive forms that deserve careful examination.

The retributivist theory holds that punishment is justified because those who do wrong deserve to suffer for their wrongdoing. Applied to military offences, retributivism would hold that a soldier who deserts deserves to be punished because desertion is intrinsically wrong, a betrayal of the commitments undertaken upon enlistment, a breach of the obligations of loyalty and comradeship, and a violation of the social and institutional relationships within which military service is embedded. The retributivist justification for punishment does not require any calculation of consequences: it simply holds that wrongdoing demands a proportionate response.

The deterrent theory holds that punishment is justified by its effects in discouraging future wrongdoing, both by the offender who is punished and by others who observe the punishment and are discouraged from following the same path. In the military context, the deterrent theory has special importance because the consequences of military misconduct, especially in operational situations, can be catastrophic. A single act of cowardice or desertion in the right, or rather the wrong, moment can cost the lives of comrades, compromise the success of an operation, or expose non-combatants to harm. The stakes of military misconduct are often higher than those of equivalent civilian misconduct, and this arguably justifies a relatively severe approach to military punishment from a deterrent perspective.

But the deterrent theory has significant limitations in the military context. Classical deterrence theory assumes that prospective offenders are rational agents who calculate the expected costs and benefits of their actions and are deterred by the prospect of punishment when the expected cost exceeds the expected benefit. This assumption may not be well-suited to the circumstances in which most serious military misconduct occurs. A soldier who flees in terror from an overwhelming enemy force is not typically engaged in rational cost-benefit calculation: he is in the grip of an overwhelming fear that bypasses rational deliberation. Whether the prospect of punishment can effectively deter conduct that is not the product of rational deliberation is a serious question for deterrence theory in the military context.

The incapacitation theory holds that punishment is justified by its effect in preventing the offender from committing further offences. In the military context, incapacitation through dismissal from the service or imprisonment removes the offender from the institutional context in which military misconduct is possible, and may be justified on these grounds. But incapacitation is rarely the primary justification offered for military punishment, since the Air

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Force Act provides for a wide range of punishments short of imprisonment, and these can only be justified on other grounds.

The rehabilitation theory holds that punishment is justified by its tendency to reform the offender and restore him to productive membership in the community. In the military context, rehabilitation has traditionally been given less emphasis than in civilian penology, partly because the discipline of military life is thought to provide its own reforming mechanism, and partly because the institutional interests that drive military punishment are primarily concerned with discipline and effectiveness rather than individual rehabilitation. However, there is a growing recognition in contemporary military justice literature, reflected in recent reforms in the United States, Canada, and the United Kingdom, that rehabilitation should play a more prominent role in the justification and design of military punishment. The development of diversionary and non-punitive responses to minor military misconduct is an expression of this rehabilitative impulse.

The expressivist theory, associated in particular with the work of philosophers such as Jean Hampton and Antony Duff, holds that punishment is justified as a means of expressing the community's condemnation of wrongdoing and communicating to the offender the wrongfulness of his conduct. In the military context, expressivism captures something important about the function of punishment that the other theories miss: the expressive function of military punishment in affirming the values of the institution, demonstrating the seriousness with which those values are held, and communicating to the offender and to the wider service community that certain forms of conduct are incompatible with membership in the military community.

The expressivist theory also raises an important question about the audience for military punishment. Military punishment expresses something to multiple audiences simultaneously: to the offender, to the unit in which the offence was committed, to the wider Air Force community, and to the civilian public whose confidence in the integrity of the armed forces is a matter of considerable institutional importance. The public dimension of military punishment is particularly significant in the context of air force operations, where accidents and misconduct often attract intense public scrutiny and where the Air Force's reputation for technical professionalism and operational discipline is a crucial asset.

16.4 The Principle of Legality and Military Offences: Void for Vagueness and Related Concerns

One of the foundational principles of criminal law in any legal system committed to the rule of law is the principle of legality: the requirement that criminal offences be defined with sufficient clarity that a person can know in advance what conduct is prohibited and can regulate his behaviour accordingly. This principle is expressed in the Latin maxim nullum crimen sine lege, no crime without law, and its variants, nulla poena sine lege, no punishment without law, which together constitute a bedrock commitment of constitutional criminal law systems worldwide.

The principle of legality creates particular challenges in the military law context, for reasons that have already been noted in passing in Part One. The Air Force Act of 1953 defines certain offences with considerable specificity, identifying the precise conduct prohibited and the elements that must be proved. But it also contains provisions of considerable breadth and

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generality, most notably the provision prohibiting conduct prejudicial to good order and air force discipline, which has no precise civilian equivalent and which depends for its content on the customs, traditions, and professional standards of the Air Force rather than on any explicit statutory definition.

The challenge posed by broadly defined military offences for the principle of legality is not unique to Bangladesh. It is a challenge that military justice systems around the world have grappled with for generations, and the responses to it have varied considerably. The United States Uniform Code of Military Justice, in its Article 134, contains a similarly broad general article that prohibits conduct to the prejudice of good order and discipline in the armed forces and conduct of a nature to bring discredit upon the armed forces. American military courts have developed an extensive body of case law interpreting this provision, including doctrines about what degree of specificity is required and when prosecution under the general article is constitutionally permissible.

The fundamental tension in this area of law is between the need for institutional flexibility in responding to a potentially infinite variety of misconduct and the individual's right to fair notice of what conduct is prohibited. An air force that could only respond to forms of misconduct explicitly listed in a statute would be poorly equipped to deal with the novel forms of misconduct that technological change, operational evolution, and the ingenuity of human wrongdoing continually generate. But an air force that could charge any conduct it disapproved of under a broad general provision without having given advance notice that such conduct was prohibited would be operating a system incompatible with the rule of law.

The resolution of this tension requires careful attention to several considerations. The first is whether the conduct in question falls within a category of prohibition that would be recognisable to any reasonable person in the military context, even if it is not explicitly listed in a statute. The second is whether institutional guidance, in the form of regulations, standing orders, and published service instructions, provides the specific notice that the statute does not. The third is whether the broad provision serves a genuinely residual function, catching forms of misconduct that fall between the explicit provisions without duplicating them, or whether it functions as an all-purpose charge that is used to avoid the more demanding proof requirements of specific offence provisions.

These considerations will be revisited in detail when this handbook comes to the analysis of the general conduct provision later in this Part. For present purposes, it is sufficient to note that the principle of legality provides an important evaluative standard against which all of the offence provisions of the Air Force Act must be assessed, and that this assessment requires attention to both the text of the Act and the institutional context of norms, regulations, and practices within which the Act operates.

16.5 The Theory of Superior Orders: When Obedience Is and Is Not a Defence

One of the most philosophically and practically significant questions in military law is the question of superior orders: when, if ever, is the fact that a person was acting on the orders of a superior officer a complete or partial defence to criminal liability? This question arises in acute

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form in the context of offences committed in purported compliance with orders, but it also has broader relevance for the analysis of all military offences, since the entire framework of military discipline rests on the premise that obedience to orders is a cardinal virtue of military service.

The historical background to the superior orders doctrine is complex and contested. The traditional British military law position was that a soldier was obliged to obey the lawful orders of a superior, but that this obligation did not extend to orders that were so manifestly illegal that any reasonable person would recognise them as unlawful. This position, sometimes described as the manifestly illegal order exception, was not applied with any consistency in British military practice before the twentieth century, when political and institutional pressures generally favoured a more absolute conception of military obedience.

The catastrophic experience of the Second World War fundamentally transformed the international legal framework governing superior orders. The Nuremberg Tribunal, in its judgment of 1946, unequivocally rejected the defence of superior orders as a complete justification for participation in war crimes and crimes against humanity. The Tribunal held that the fact that a defendant acted in compliance with the orders of his government or a superior officer did not relieve him of responsibility under international law, though it might be considered in mitigation of punishment. This principle was subsequently codified in various instruments of international humanitarian law and international criminal law, most recently in Article 33 of the Rome Statute of the International Criminal Court, which provides that superior orders constitute a defence to war crimes only when the accused did not know the order was unlawful and the order was not manifestly unlawful.

For Bangladesh Air Force law, the superior orders doctrine has both domestic and international dimensions. At the domestic level, the Air Force Act implicitly recognises the centrality of obedience to orders by making disobedience to a lawful command a specific offence. The word lawful in this formulation is crucial: it implies that the obligation of obedience is conditional on the lawfulness of the order, which in turn implies that a person who obeys an unlawful order is not acting within the framework of military law but outside it. The practical implications of this analysis will be explored in more detail when this handbook examines the specific offences of disobedience and insubordination.

At the international level, the Bangladesh Air Force operates in an environment increasingly shaped by international humanitarian law, international criminal law, and the accountability mechanisms associated with peacekeeping operations and other international deployments. The superior orders doctrine, in its international law formulation, applies whenever Bangladesh Air Force personnel are involved in operations governed by international law, which in practice means virtually all overseas operations and any domestic operations involving the use of force against persons. The training of personnel in the requirements of international humanitarian law and the limits of the superior orders defence is accordingly an important element of the legal education of all Bangladesh Air Force officers.

The philosophical analysis of the superior orders problem reaches beyond the purely legal. It connects to deep questions in moral philosophy about the nature of moral responsibility, the conditions under which individual moral agency can be suspended or transferred within

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institutional hierarchies, and the relationship between institutional authority and individual conscience. These questions were dramatically confronted by the officers and airmen of the then Pakistan Air Force who faced the decision in 1971 of whether to obey the orders of an authority engaged in what would later be characterised as genocidal violence. Their choices, and the choices of those on both sides of that conflict, represent one of the most profound case studies in the lived reality of the superior orders problem that any student of military law could encounter.

16.6 Mens Rea in Military Offences: Intent, Recklessness, and Strict Liability

Criminal law in any serious system requires that liability depend not just on what a person did but on the state of mind with which he did it. The principle that there is no crime without a guilty mind, expressed in the Latin maxim actus non facit reum nisi mens sit rea, is a foundational principle of common law criminal jurisprudence and is reflected, explicitly or implicitly, in the offence provisions of the Air Force Act.

However, the application of mens rea principles in military law is complicated by the specific character of military offences. In some military offences, the mental element is clearly defined and demanding. Desertion, for example, requires proof of an intention to permanently absent oneself from military service, an intention that distinguishes it from the less serious offence of absence without leave. Mutiny requires proof of a purpose to subvert the authority of those set in command or to resist lawful authority. These specific intent requirements import into the military offence framework the same kind of mental element analysis that characterises serious civilian criminal offences.

But other military offences involve considerably less demanding mental elements, and some appear to approach strict liability in their formulation. Negligence offences, by definition, do not require proof of intention or even recklessness but only of a failure to take the care that a reasonable person in the circumstances would take. Some absence-related offences appear to impose liability simply for the fact of absence, without requiring proof of any particular mental state. And the catch-all provision of conduct prejudicial to good order and discipline imposes liability for conduct that has a specified effect on military discipline without clearly specifying what mental state is required with respect to that effect.

The treatment of mens rea in military law has been a subject of considerable scholarly attention in recent years, partly in response to the growing emphasis on international human rights standards that require a meaningful mental element for serious criminal offences. The International Covenant on Civil and Political Rights, to which Bangladesh is a party, and its General Comment No. 32 on the right to a fair trial, impose requirements of procedural fairness that implicitly require meaningful mental element analysis in serious criminal proceedings, including those conducted by military courts.

The current state of Bangladesh Air Force law in this area is one of relative underdevelopment. The Act itself does not systematically specify the mental elements required for each offence, and the established practice of military law, deriving from British colonial tradition, has not always engaged rigorously with mens rea analysis. This is an area in which the influence of constitutional rights analysis and international human rights standards has significant potential to

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reshape the interpretation and application of Air Force Act offences, in the direction of greater clarity, greater fairness, and better alignment with the rule-of-law values that the Constitution embodies.

CHAPTER SEVENTEEN: OFFENCES AGAINST MILITARY AUTHORITY: MUTINY, SEDITION, AND INSUBORDINATION

17.1 Mutiny: The Supreme Military Offence

Of all the offences defined in the Air Force Act, none is more serious, none carries more severe consequences, and none touches more directly on the philosophical foundations of military authority than the offence of mutiny. Mutiny is, in essence, the collective repudiation of military authority: the assertion by those subject to command that they will not obey, that they will resist, or that they will substitute their collective will for the hierarchical authority of those set above them. It is the military law equivalent of revolution in political theory: the point at which the governed refuse the authority of those who govern.

The Air Force Act defines and prohibits mutiny in terms that make clear the absolute character of the prohibition. A person commits mutiny under the Act if he takes part in any combination of two or more persons to resist or to conspire to resist lawful authority in the Air Force, or to overthrow, or attempt to overthrow, the authority of any officer, or to disobey superior authority in such circumstances as to make such disobedience subversive of discipline. The language of the provision deserves careful analysis, because it reveals a great deal about the nature of the authority that military law seeks to protect.

The requirement of combination, of two or more persons acting together, is jurisprudentially significant. It distinguishes mutiny from individual insubordination, which is also an offence but a much less serious one. The combination requirement recognises that mutiny is not merely individual disobedience magnified. It is a qualitatively different threat to military authority, one that involves the collective exercise of will against the hierarchical order. When two or more persons combine to resist authority, they create an alternative locus of power within the institution, a counter-authority that challenges the legitimacy of the command structure itself. This collective character of mutiny is what makes it the most dangerous of all military offences and what justifies the severity of the penalties prescribed.

The requirement that the resistance be to lawful authority is, as has already been noted in the context of the superior orders doctrine, enormously important. Resistance to unlawful authority is not mutiny under the Act: it may indeed be not merely permissible but obligatory under both domestic and international law. The practical difficulty, of course, is that the question of whether an order or authority is lawful is frequently contested precisely in the situations of greatest stress and urgency where resistance is most likely to occur. The person who resists what he sincerely but incorrectly believes to be unlawful authority may have a compelling moral claim for extenuation even if he has no legal defence, and the institution that insists on the absolute

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authority of command in all circumstances must reckon with the possibility that it is thereby insulating unlawful conduct from effective resistance.

17.2 Historical and Comparative Analysis of Mutiny

The history of military mutiny is a history of the most extreme tests of the relationship between military authority and justice. The great mutinies of history, the mutiny of the Indian Sepoys in 1857, the mutinies of the French and British armies in 1917 during the First World War, the Invergordon Mutiny of 1931 in the Royal Navy, all involved not simply the breakdown of discipline but a crisis of legitimacy in which those subject to military authority concluded that the authority being exercised over them was unjust, incompetent, or intolerable.

The 1857 Sepoy Mutiny is particularly relevant to the historical background of Bangladesh Air Force law, given the colonial inheritance discussed in Part One. The Sepoy Mutiny, or the First War of Indian Independence as it is characterised in some nationalist historiographies, arose from a complex of grievances: religious and cultural insensitivity on the part of the colonial military establishment, economic exploitation, the erosion of the traditional social status of the sepoy, and specific provocations such as the issue of cartridges allegedly greased with beef and pork fat. From the British perspective, it was a mutiny of the most serious kind, a collective armed resistance to legitimate military authority. From the perspective of Indian nationalism, it was an early expression of resistance to colonial oppression.

The dual perspective on the 1857 events illuminates a fundamental problem in the jurisprudence of mutiny: the determination of whether authority is legitimate, which is the precondition for classifying resistance to it as mutiny, cannot be made from a neutral standpoint that is unaffected by the political and historical context in which the resistance occurs. What one observer sees as mutiny, another may see as justified resistance to oppression. This observation has immediate relevance to the Bangladesh Air Force's own founding history, in which Bengali personnel who left the Pakistan Air Force to join the liberation struggle were, from one perspective, deserters and mutineers and, from another perspective, patriots and heroes.

The French Army mutinies of 1917 offer a different but equally instructive historical lesson. Following the catastrophic failure of the Nivelle Offensive in April 1917, which had cost enormous casualties for negligible gains, large numbers of French soldiers refused to participate in further offensive operations. The French military command, under General Petain, responded with a combination of prosecutions, selective executions of ringleaders, and substantial improvements in the conditions of service, including better food, longer periods of rest, and more humane treatment generally. The French mutinies illustrate the systemic character of mutinous behaviour: when mutiny occurs on a large scale, it is almost always a symptom of deeper institutional failures, inadequate leadership, poor conditions, unjust treatment, or strategic incompetence, and addressing only the symptom without addressing the underlying cause will not restore genuine discipline.

The lessons of the French mutinies have been acknowledged by military historians and legal scholars as relevant to the design of military justice systems. A military justice system that responds to collective disobedience solely through punitive measures, without examining the

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conditions that gave rise to it, is likely to be less effective in preventing future mutinous conduct than one that treats serious collective disobedience as a signal of institutional malfunction requiring investigation and reform.

17.3 Sedition and Incitement to Mutiny

The offences of sedition and incitement to mutiny are closely related to mutiny itself but address different stages of the chain of conduct that may culminate in open collective resistance to authority. Sedition in the military context refers to conduct that tends to undermine the loyalty or allegiance of service personnel to the Air Force or to the lawful authority of their officers, without necessarily rising to the level of active resistance. Incitement to mutiny refers to the encouragement or inducement of others to commit mutiny.

The offences of sedition and incitement are in some respects more philosophically controversial than mutiny itself, because they criminalise not just harmful conduct but preparatory or expressive conduct that has not yet resulted in actual resistance. The person who incites mutiny is punished not for any actual disruption of military authority but for his words or other expressive acts, which may have caused others to consider or plan resistance without actually carrying it out. This raises questions about the relationship between speech, expression, and criminal liability that are among the most contested in the jurisprudence of both civilian and military law.

In the civilian context, the criminal law's treatment of incitement has been shaped by the recognition that free expression is a fundamental right and that the criminalisation of speech requires careful justification. In Bangladesh, Article 39 of the Constitution guarantees freedom of thought, conscience, and speech, subject to reasonable restrictions in the interests of, among other things, national security and public order. In the military context, the special requirements of discipline create additional justification for restrictions on expression that might be impermissible in civilian life. A culture of open criticism of superior officers' decisions, however valuable in a civil society context, is incompatible with the operational cohesion that military effectiveness requires.

But the criminal law is a blunt instrument for managing the boundary between legitimate criticism and dangerous sedition, and the broad framing of sedition offences in military law creates significant potential for abuse. A commanding officer who is challenged on the competence or propriety of his decisions, and who responds by charging his challenger with sedition, is using the criminal law as a tool of institutional self-protection rather than as a genuine mechanism of public safety. The history of military justice in various countries contains numerous examples of sedition charges being used to suppress legitimate whistleblowing, to punish critics of institutional corruption, and to silence those who challenge the official account of military misconduct.

The challenge for Bangladesh Air Force law is to maintain the genuine core of the sedition prohibition, the protection of military discipline and operational effectiveness from deliberate subversion, while ensuring that the prohibition is not used as a weapon against those who seek to raise legitimate concerns about institutional conduct through appropriate channels. This requires

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both clarity in the definition of the offence and strong institutional commitment to the protection of legitimate forms of internal criticism and dissent.

17.4 Insubordination: The Law of Hierarchy in Daily Practice

While mutiny and sedition represent the dramatic extremes of military disobedience, insubordination is the everyday face of the challenge to military hierarchy, the routine assertion of individual will against institutional authority that military discipline must continuously resist without brutally suppressing. Insubordination takes many forms: direct refusal to obey an order, disrespectful behaviour toward a superior officer, wilful defiance of the authority of a superior, and striking or using violence toward a superior.

The Air Force Act treats insubordination with considerable seriousness, reflecting the institutional importance of respectful and effective working relationships within the hierarchy of command. But the law of insubordination also raises important questions about what kinds of authority military personnel are obliged to respect and what kinds of responses to that authority are legitimate.

The question of what constitutes a lawful order, compliance with which is obligatory and non-compliance with which constitutes an offence, is central to the analysis of insubordination. An order is lawful if it relates to military duty, is given by a person with proper authority to give it, and does not require the commission of an illegal act. The last of these conditions is particularly important: an officer is not guilty of insubordination for refusing to carry out an order that would require him to commit a crime, whether under domestic law or international law. This principle, which flows from the superior orders doctrine discussed earlier, is essential to the moral coherence of the military justice system and to the international law obligations that Bangladesh has undertaken.

The concept of conduct disrespectful to a superior officer is one that has generated considerable discussion in contemporary military law scholarship. In a hierarchical institution, some degree of deference in manner and expression toward those of superior rank is an institutional necessity. But the line between required deference and degrading subservience is not always easy to draw, and the enforcement of rules of deference through criminal prosecution carries risks of both overkill and discriminatory application.

The emerging scholarship on dignity, autonomy, and military service, drawing on philosophical traditions ranging from Kantian ethics to feminist theory to critical race theory, has challenged the traditional assumption that military deference norms are self-evidently justified by operational necessity. Contemporary scholars like David Luban and Anthony Pfaff have argued that military institutions owe their members a degree of respect for dignity and autonomy that constrains the demands that can legitimately be made in the name of discipline. The increasing international attention to the treatment of women in military institutions, including harassment, discrimination, and hostile working environments, has further complicated the picture of what forms of institutional authority are legitimate and what forms constitute abuse.

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For Bangladesh Air Force law, these debates have practical implications. The service has, like all armed forces, an obligation to take seriously the dignitary rights of its personnel and to ensure that the law of insubordination is not applied in ways that enforce degrading or abusive authority rather than legitimate institutional hierarchy. The distinction between the two is not always easy to draw in practice, but the effort to draw it carefully is an essential component of the rule of law within the institution.

CHAPTER EIGHTEEN: ABSENCE OFFENCES: DESERTION, ABSENCE WITHOUT LEAVE, AND THE ETHICS OF LEAVING

18.1 Desertion: The Law, The Elements, and The Historical Background

Desertion is among the most ancient and most universally prohibited of military offences. In virtually every organised armed force in human history, the deliberate and permanent abandonment of military service has been treated as among the most serious of crimes, meriting the most severe punishments including death. The Roman legions imposed decimation, the execution of one in ten men selected by lot, as a collective punishment for units that had demonstrated cowardice or abandoned their posts. English military law prescribed the death penalty for desertion for centuries. The contemporary Bangladesh Air Force Act continues to treat desertion as an extremely serious offence, though the death penalty for desertion is no longer mandated.

The legal elements of desertion under the Air Force Act require careful analysis. Desertion involves the intentional absence of a person from his unit or place of duty with the intention of permanently absenting himself from military service, or with the intention of avoiding a particular service or a particular duty. This definition requires both an actus reus, the fact of absence, and a specific mens rea, the intention of permanent or purposive absence. It is the mens rea requirement that principally distinguishes desertion from the less serious offence of absence without leave.

The distinction between desertion and absence without leave is one of the most practically significant distinctions in military criminal law. A person who is absent without leave is absent without authorisation but has no intention of permanently abandoning military service: he intends to return, however tardily and however reluctantly. A person who deserts intends not to return, or intends to avoid a specific duty or service. The practical consequences of the distinction are enormous: desertion carries substantially more severe maximum punishments than absence without leave, and the stigma attached to a finding of desertion is considerably greater than that attached to absence without leave.

The proof of the specific intention required for desertion is often the central issue in desertion prosecutions. Intent cannot be directly observed: it must be inferred from the surrounding circumstances. A person who disappears from his unit on the eve of a hazardous operation and is arrested several months later far from any military installation is likely to have his intention inferred as one of desertion rather than absence without leave. A person who is absent for a few

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days and returns voluntarily is likely to have his conduct treated as absence without leave. But there are many cases between these extremes in which the inference of intention is genuinely uncertain, and the adjudicator must exercise careful judgment.

The evidentiary issues around intention in desertion cases connect to broader questions in criminal law about the inference of mental states from conduct. The presumption, sometimes applied in military law, that a person who has been absent for a specified period is presumed to have intended to desert, is a legally problematic device that effectively reverses the burden of proof in relation to the most critical element of the offence. Such presumptions should be treated with great caution in light of the constitutional guarantee against conviction without proof beyond reasonable doubt and the international human rights standard of the presumption of innocence.

18.2 The Philosophy of Desertion: Courage, Fear, and the Limits of Institutional Demand

The jurisprudential analysis of desertion is incomplete without engagement with its philosophical dimensions. Desertion is, at its heart, the act of a person who has decided that the demands of military service have become unbearable and has responded by leaving. The decision to desert may be driven by fear, by moral objection to the operations being conducted, by family emergency, by mental illness, by the breakdown of unit cohesion, by grievance against the institution, or by some complex combination of all of these factors.

The traditional military law approach to desertion treats the deserter's motivation as essentially irrelevant to the question of criminal liability, though it may be relevant to the question of punishment. The act of desertion, on this view, is a simple failure of duty, a breach of the fundamental obligation of service that cannot be excused by the deserter's personal circumstances or motivations. This approach has the advantage of clarity and consistency: it applies the same standard to all without requiring inquiry into the subjective experience of the offender.

But this approach has been challenged with increasing force in contemporary military jurisprudence and ethics. The question of what it is reasonable to demand of human beings in the context of military service, and at what point the demands of service exceed what can be fairly imposed, is one that liberal political philosophy has found genuinely difficult to answer. John Rawls, whose work on justice remains foundational for contemporary liberal political theory, argued for a right of conscientious refusal in circumstances where the demands of the state conflict with sincere and deeply held moral convictions. While Rawls was primarily concerned with conscientious objection to military service as such, rather than desertion after enlistment, the philosophical issues are related.

The experience of warfare in contemporary contexts has also complicated the traditional analysis. The psychological injuries inflicted by combat experience, including post-traumatic stress disorder and other combat-related conditions, are now well established as genuine and serious medical conditions that profoundly affect a person's capacity for rational decision-making, emotional regulation, and moral judgment. A person who deserts in the aftermath of severe psychological trauma is not the same morally and legally as a person who deserts for

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purely selfish or cowardly reasons, and the law ought to be capable of recognising this difference.

Bangladesh Air Force law has not yet developed a systematic framework for addressing the relationship between mental health, combat trauma, and criminal liability in the context of absence offences. This is an area in which significant development is needed, and in which the emerging international literature on military mental health and military justice provides important guidance.

18.3 Absence Without Leave: The Most Frequently Prosecuted Military Offence

Absence without leave, often abbreviated as AWOL in military parlance, is the most frequently prosecuted of all military offences in virtually every armed force in the world. This is not surprising: the requirement that service personnel be present at their appointed place of duty at the appointed time is one of the most basic and most frequently tested obligations of military service, and the failure to meet this requirement is among the most common forms of military misconduct.

The offence of absence without leave under the Air Force Act is committed when a person subject to the Act absents himself from his unit, place of duty, or any place where he is required to be, without authorisation. Unlike desertion, absence without leave requires no specific intention: it is sufficient that the person was absent without authorisation. The mental element required is generally understood to be a simple intention to be absent, without any requirement of intention with regard to the permanence of the absence.

The simplicity of the legal elements of AWOL contrasts with the enormous variety of the circumstances in which the offence is committed. Absence without leave may range from missing a morning roll call by a few minutes at one end of the spectrum to being absent for months while concealing one's whereabouts at the other. The sentencing framework must be capable of accommodating this entire range, and the discretion of adjudicators in assessing the appropriate punishment for AWOL reflects the enormous contextual variation in the seriousness of different instances of the offence.

The systemic dimension of absence without leave rates deserves particular attention. When AWOL rates in a unit or across a force are high, this is typically a symptom of deeper institutional problems: poor leadership, inadequate pay or conditions of service, unclear expectations, excessive workload, insufficient leave, family stress, or some combination of these factors. A military justice system that responds to high AWOL rates purely through increased prosecution and punishment, without examining and addressing the underlying causes, is treating symptoms rather than causes and is unlikely to produce durable improvement. This insight, which is well established in the management literature on human resources and institutional culture, has implications for the design of the military justice response to absence offences.

18.4 Malingering and Related Absence Offences

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Malingering, the deliberate feigning or exaggeration of illness or incapacity in order to avoid military duty, is an offence under the Air Force Act that occupies an interesting borderland between medical, ethical, and legal analysis. The malingerer presents himself as unable to perform his duties when he is in fact capable of doing so, thereby placing on others the burden of duties he is avoiding and undermining the integrity of the medical assessment system on which the Air Force's management of sick personnel depends.

The legal difficulties with malingering prosecutions are considerable. The fundamental evidentiary problem is that genuine illness and feigned illness may present in ways that are difficult to distinguish even for experienced medical professionals. The legal standard of proof beyond reasonable doubt, applied to the proposition that the accused was in fact capable of performing his duties when he claimed to be incapable, requires a degree of certainty that medical science does not always permit. Convictions for malingering accordingly require not merely a finding that the accused claimed incapacity but convincing medical evidence that the claim was false, evidence that may be genuinely difficult to obtain.

The philosophical dimension of malingering raises questions about the relationship between bodily autonomy, the service relationship, and the limits of institutional control over the person. A service member's body is, in important senses, at the disposal of the institution in ways that a civilian's body is not. The institution can require physical training, can expose personnel to hazardous conditions, can restrict diet and sleep, and can deploy personnel to environments of extreme danger. Against this background of extensive institutional control over the body, the act of refusing to expose oneself to danger or difficulty through the medium of claimed illness takes on a character that is different from simple dishonesty: it is, in part, a form of self-protection in circumstances where self-protection is institutionally prohibited.

This is not to say that malingering should be decriminalised or that the offence serves no legitimate purpose. The integrity of the medical assessment system is a genuine institutional interest, and deliberate fraud in relation to that system is a genuine offence. But the prosecution of malingering cases requires sensitivity to the complexity of the relationship between the claimed incapacity, the institutional environment in which it arises, and the full range of factors that may be driving the malingerer's conduct.

CHAPTER NINETEEN: OPERATIONAL OFFENCES: COWARDICE, MISBEHAVIOUR BEFORE THE ENEMY, AND THE ETHICS OF COMBAT

19.1 Cowardice Before the Enemy: The Most Philosophically Charged Military Offence

No military offence is more philosophically charged, more morally complex, or more humanly difficult than the offence of cowardice in the face of the enemy. The prohibition of cowardice sits at the intersection of military law, military ethics, moral psychology, and the philosophy of courage, and raises questions that go to the heart of what it means to be a human being under conditions of extreme danger and terror.

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The Air Force Act provides for the offence of cowardice in a form that applies to persons who, when in the presence of the enemy, shamefully or through cowardice desert their post, throw down their arms, or by any means save themselves. The language of the provision is revealing: the reference to shameful conduct introduces a moral dimension, a concept of dishonour and betrayal, that goes beyond the merely technical. Cowardice in the face of the enemy is not just a breach of duty: it is, according to the law, a shameful act, an act that marks the person as morally deficient in a way that reflects on both him and the institution.

But is this characterisation philosophically defensible? The philosophy of courage has a long history, stretching from Aristotle's Nicomachean Ethics, in which courage is defined as the mean between rashness and cowardice, through the Stoic tradition, in which the wise man maintains equanimity in the face of death, to contemporary virtue ethics, in which courage is understood as a character trait that disposes its possessor to respond appropriately to danger. On most accounts of courage, the courageous person is not one who feels no fear but one who feels fear in proportion to the genuine danger and responds to that fear in a way that is guided by reason and virtue rather than by the raw impulse of self-preservation.

The crucial question for military law is whether the person who fails to behave with courage in the face of the enemy is morally culpable in a way that justifies criminal punishment. The answer to this question depends in part on the character of the failure. A person who, in the face of genuine danger, is overcome by terror and is unable to act in accordance with his intentions and training may not be morally culpable at all, or may be culpable only in a diminished degree, since his failure stems from a psychological response to danger that is, to a considerable extent, not within his control. A person who deliberately avoids danger out of calculated self-interest, who has the capacity to act with courage and chooses not to, stands in a very different moral position.

Contemporary understanding of the psychology of fear and panic, informed by decades of research in military psychology, cognitive neuroscience, and trauma studies, makes it extremely difficult to maintain the traditional military law assumption that cowardice in the face of the enemy is simply a voluntary choice, a failure of moral will that the law can treat on the same footing as deliberate insubordination or premeditated desertion. The terror experienced in combat, particularly for personnel who have not been previously exposed to extreme danger, can be profoundly overwhelming in ways that affect cognitive function, impair decision-making, and override the trained responses that military preparation is designed to instil. This does not mean that military law should be indifferent to conduct that endangers comrades and compromises operations. But it does mean that the law should be capable of distinguishing between the person who could have acted with courage and chose not to and the person who was overwhelmed by a fear that was, in the circumstances, not within his effective control.

19.2 The Historical Treatment of Cowardice: From Summary Execution to Posthumous Pardon

The history of the legal treatment of cowardice in military law is a history of extraordinary severity followed by gradual, painful recognition of the human complexity of fear in combat. During the First World War, British and Commonwealth courts martial convicted and sentenced

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to death hundreds of soldiers for offences including cowardice, desertion, and related conduct. Many of these executions were carried out, and the men executed were for decades treated as disgraced criminals rather than as casualties of war.

The gradual reassessment of these cases in the late twentieth and early twenty-first centuries, culminating in the posthumous pardons granted by the British government in 2006 under the Armed Forces Act, represents a profound cultural and legal reckoning with the assumptions that had governed the earlier treatment. The pardons recognised that many of those who had been executed for cowardice or desertion had in fact been suffering from what is now recognised as combat stress, shell shock, or post-traumatic stress disorder, conditions that were not understood, diagnosed, or treated as medical conditions at the time of their execution.

The British experience of posthumous pardons for executed First World War soldiers has direct relevance for contemporary Bangladesh Air Force law. It serves as a powerful reminder that the legal treatment of cowardice-related offences has historically been shaped by medical ignorance as well as by the institutional imperatives of maintaining discipline, and that the progressive incorporation of psychological and medical knowledge into the legal analysis of these offences is not a weakening of military discipline but an enhancement of its moral credibility.

19.3 Misbehaviour Before the Enemy

The offence of misbehaviour before the enemy covers a broader range of conduct than cowardice in the narrow sense, encompassing various forms of misconduct in or near combat situations that compromise the operational effectiveness of the Air Force or expose personnel or operations to unnecessary danger. This includes abandoning equipment without due cause, failing to take proper care of equipment entrusted to one's charge, and various forms of misconduct in the face of the enemy that do not fit neatly into the specific cowardice provision.

In the air force context, the offence of misbehaviour before the enemy has specific application to the conduct of flight operations in operational environments. A pilot who abandons an aircraft without due cause, who fails to engage the enemy when in a position to do so, who deviates from a briefed mission without authorisation, or who takes actions that endanger fellow crew members or the success of an operation, may be guilty of misbehaviour before the enemy. The operational consequences of such conduct in the air force context can be catastrophic: a failure in aerial combat or in the execution of an air strike can cost lives not just in the aircraft but among those depending on the success of the operation below.

The analysis of misbehaviour before the enemy in the air force context requires engagement with the highly technical character of air force operations. The determination of whether a pilot acted properly in a particular operational situation requires expert assessment of the operational conditions, the equipment available, the tactical situation, and the range of options available to the pilot at the relevant moment. This technical complexity means that the adjudication of misbehaviour charges in the air force context demands particular expertise and care, and that adjudicators without relevant operational experience must rely heavily on expert opinion.

19.4 Offences Relating to Communication With the Enemy

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Among the offences in the operational category are those relating to improper communication with the enemy: signalling to the enemy, surrendering without sufficient cause, and related conduct that involves some form of interaction with hostile forces in ways that are not authorised. These offences are particularly significant in the air force context because the nature of aerial operations creates specific vulnerabilities and specific temptations that are different from those encountered in land or naval warfare.

The offence of communicating with the enemy without authorisation connects to modern concerns about cyber warfare, electronic communication, and the potential for air force personnel to be compromised through digital means. A pilot or signals officer who communicates with unauthorised parties through secure or unsecure channels in operational contexts may be committing an offence under this provision, and the evolving character of communications technology creates new forms of this offence that the original drafters of the Act could not have anticipated.

The surrender offences raise philosophically interesting questions about the circumstances under which surrender is justified and when it constitutes a criminal act. International humanitarian law, specifically the Geneva Conventions and their Additional Protocols, recognise the right of combatants to surrender, and a person who has genuinely laid down arms and indicated his intention to surrender must not be killed. But military law also recognises that premature or unwarranted surrender can constitute a criminal failure of duty, a betrayal of comrades, and a compromise of operational objectives. The balance between the humanitarian right to surrender and the military prohibition of unwarranted surrender is one of the most delicate in the intersection of military law and international humanitarian law.

CHAPTER TWENTY: OFFENCES RELATED TO PROPERTY, PRISONERS, AND THE LAWS OF WAR

20.1 Property Offences in the Military Context: Looting, Pillaging, and Misappropriation

The offences relating to property in the Air Force Act encompass both the ordinary dishonesty offences that have civilian equivalents, theft, fraud, and misappropriation, and offences with no civilian counterpart that arise specifically from the military context, including the misappropriation of property taken from the enemy, the unlawful plunder of civilian property in operational areas, and the misuse of property belonging to the Air Force or to fellow service members.

The distinction between disciplinary property offences and the war crime of pillage reflects the interaction between the Air Force Act and international humanitarian law that was discussed in Part One. Under Additional Protocol I to the Geneva Conventions, pillage of property belonging to civilians in armed conflict is prohibited as a matter of international law, and the individual service member who engages in pillage may bear individual criminal responsibility under international criminal law regardless of orders or institutional sanction. The Air Force Act's property offences provide the domestic legal mechanism for addressing such conduct through the

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military justice system, and it is important that this domestic mechanism be understood in its international law context.

The theft or misappropriation of Air Force property by personnel represents a form of misconduct that has both disciplinary and operational dimensions. Air force operations depend entirely on the availability of properly maintained and properly accounted-for equipment. The theft or misuse of spare parts, fuel, tools, or other operational equipment is not merely a property offence in the ordinary sense: it can directly compromise the airworthiness of aircraft and the safety of flight operations. The potential consequences of property misconduct in the air force context thus extend far beyond the financial loss represented by the stolen or misused property, and the severity of the Air Force Act's response to such conduct reflects this understanding.

20.2 The Treatment of Prisoners: A Legal and Ethical Analysis

The offences relating to the treatment of prisoners under the Air Force Act engage directly with the requirements of international humanitarian law, which imposes detailed and demanding obligations on parties to armed conflict with respect to the humane treatment of prisoners of war and other persons in their power. The Air Force Act prohibits the mistreatment of prisoners, the theft of prisoners' property, and related forms of misconduct that violate both the Act's own standards and the requirements of the Geneva Conventions.

The treatment of prisoners is an area in which the interface between domestic military law and international law is particularly direct and immediate. Bangladesh is a party to all four Geneva Conventions of 1949 and to their Additional Protocols of 1977. These instruments impose specific obligations on Bangladesh's armed forces with respect to the treatment of prisoners of war, wounded and sick combatants, civilians in the power of a party to the conflict, and other protected persons. The failure of Air Force personnel to comply with these obligations is not merely a domestic disciplinary matter: it may constitute a war crime under international law, and it may expose both the individual service member and the Bangladesh state to international legal responsibility.

The training of Air Force personnel in the requirements of international humanitarian law, including the law relating to the treatment of prisoners, is accordingly not merely a desirable supplement to their professional education but a legal obligation. The Bangladesh Air Force's participation in United Nations peacekeeping operations, which routinely places personnel in situations involving the detention and handling of persons, makes this training particularly urgent and particularly relevant.

20.3 Environmental Offences and the Destruction of Property

The Air Force Act includes provisions prohibiting the unnecessary or wilful destruction of property, including enemy property, civilian property, and Air Force property. These provisions, while rooted in the traditional military law concern with maintaining the discipline and professionalism of the service, also connect to contemporary concerns about the environmental and humanitarian dimensions of air force operations that were not contemplated by the original drafters of the Act.

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The environmental dimensions of air force operations have attracted increasing attention in recent years, both in the context of peacetime operations, where aircraft noise, fuel spills, and other forms of environmental degradation are matters of legitimate public concern, and in the context of armed conflict, where air attacks can cause severe and long-lasting environmental damage. International environmental law, including the principle of environmental protection in armed conflict that has been developing in international humanitarian law since the 1970s, creates an evolving normative framework that may require interpretation of the Act's property destruction provisions in ways that take environmental considerations into account.

CHAPTER TWENTY-ONE: NEGLIGENCE, WATCHMAN OFFENCES, AND SAFETY IN AIR FORCE OPERATIONS

21.1 The Special Importance of Negligence Offences in Air Force Law

Of all the categories of offence in the Air Force Act, none has more immediate and direct application to the daily reality of air force operations than the negligence offences. Air force operations are, by their nature, conducted at the intersection of extreme physical forces, complex technology, and the irreducible fallibility of human beings. Aircraft are extraordinarily complex machines operating in an unforgiving environment, and the consequences of even minor errors in their operation, maintenance, or management can be catastrophic. The negligence offences in the Air Force Act provide the legal mechanism for holding personnel accountable when their failures to exercise the required standard of care result in damage, injury, or death.

The concept of negligence in the military law context builds on the civilian law concept of negligence but applies it with modifications appropriate to the military environment. In civilian negligence law, the standard of care is that of the reasonable person, a hypothetical individual with the knowledge and capacities of an ordinary person in the relevant circumstances. In the military law context, the standard of care is higher in several respects: it is the standard of care expected of a person with the specific training, experience, and professional knowledge of the relevant service role. An aircraft technician who fails to notice a safety defect that any competent technician with his training should have noticed is negligent by the military standard even if the ordinary civilian would not have noticed the defect.

The higher standard of care in military negligence offences reflects the special responsibilities of military personnel, the specific training they have received, and the potentially catastrophic consequences of their failures. But this higher standard also creates a risk of unfairness if it is applied without sensitivity to the realistic conditions under which personnel operate. The Air Force technician who misses a defect while working long hours under adverse conditions with inadequate resources is in a different moral and legal position from one who misses the same defect through simple carelessness in optimal conditions. The law of military negligence must be capable of making this distinction.

21.2 The July 2025 Aircraft Crash: A Case Study in Negligence, Accountability, and Institutional Response

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The crash of a Bangladesh Air Force FT-7BGI aircraft in Uttara, Dhaka on 21 July 2025, in which the aircraft impacted the campus of Milestone School and College, resulting in multiple deaths and injuries including to children, represents one of the most tragic and consequential aviation incidents in the history of the Bangladesh Air Force. As a case study in the application of military law to aviation disasters, it illustrates with painful clarity the intersection of technical, legal, ethical, and institutional issues that attend negligence investigations in the air force context.

While the full findings of the investigation into this tragic incident may not be publicly available at the time of writing, the event immediately raises legal questions that the framework of the Air Force Act must address. The first set of questions concerns the immediate causes of the crash: what technical, human, or systemic failures contributed to the loss of the aircraft in an urban area? The second set of concerns the question of accountability: which persons, in what roles, bear legal responsibility for those failures, and through what mechanisms should that responsibility be assessed? The third set of concerns the institutional dimension: what systemic failures or inadequacies in training, maintenance, operational procedures, or risk management contributed to the accident, and what institutional accountability mechanisms exist to address them?

The analysis of aviation accidents through the lens of military law connects to the broader field of aviation accident investigation, which has developed sophisticated methodologies for identifying causal chains and systemic factors in aviation disasters. The just culture model, developed in aviation safety literature and increasingly influential in military aviation contexts, argues that effective accident prevention requires a culture in which personnel can report errors and near-misses without fear of punishment, so that the systemic factors driving errors can be identified and addressed. A military law framework that responds to aviation accidents primarily through punitive prosecution of individual personnel, without fostering the reporting culture necessary for systemic learning, may actually undermine aviation safety by discouraging the reporting and analysis of precursor events.

Bangladesh has a profound obligation, both to the memory of those who perished on 21 July 2025 and to the future safety of the public, to ensure that the legal and institutional response to that tragedy serves the goals of genuine accountability and genuine prevention rather than the goals of institutional self-protection or the scapegoating of individual personnel. The Air Force Act provides the legal framework within which this response must operate, but the Act must be interpreted and applied with wisdom, sensitivity, and a clear-eyed understanding of what justice and safety actually require in the aftermath of a catastrophic aviation accident.

21.3 Watchman Offences: The Legal Framework of Vigilance

The watchman offences in the Air Force Act address a specific form of negligence that has particular importance in the military context: the failure of personnel assigned to guard or watch duties to perform those duties with the required degree of attention and vigilance. A person assigned to guard an aircraft, a weapons store, a communications installation, or an airbase perimeter is not merely performing a routine task. He is the last line of defence against threats

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that may be catastrophic in their consequences: sabotage, theft of weapons, hostile action, or unauthorised access to critical facilities.

The offence of sleeping at one's post, of abandoning a guard without authorisation, or of performing guard duties negligently or perfunctorily, is treated with considerable seriousness in the Air Force Act, and for good reason. The history of military security is replete with examples of catastrophes that resulted from the failure of personnel to perform their guard duties with the required vigilance. The 1983 Beirut barracks bombing, in which a suicide truck bomb destroyed a US Marines barracks, killing 241 American servicemen, was in part the result of failures in the performance of guard duties. More recently, terrorist attacks on military installations in South Asia have demonstrated the catastrophic consequences of inadequate security vigilance.

In the Bangladesh context, the security of air force installations has taken on heightened importance in the context of the security challenges facing the country, including the threat of terrorism, the complexities of the Rohingya crisis and its spillover effects, and the general security environment of the region. The legal framework for holding security personnel accountable for failures in the performance of their duties must be robust, clear, and consistently applied.

21.4 The Safety Case: Aviation Safety Law and Its Interaction with Military Discipline

The field of aviation safety has developed its own sophisticated legal and regulatory framework, partly under the influence of the International Civil Aviation Organisation and its Standards and Recommended Practices, and partly through the development of national aviation safety regulation. The interaction between the aviation safety framework and the military discipline framework creates important questions for Bangladesh Air Force law that deserve careful analysis.

Aviation safety regulation, whether civilian or military, operates on the premise that safety is a systemic property of the aviation system as a whole, not merely the product of individual competence or vigilance. The Swiss cheese model of accident causation, developed by James Reason and now standard in aviation safety analysis, holds that accidents occur when multiple layers of defence simultaneously fail in ways that allow a hazard to reach its potential victim. On this model, accidents are typically the result of systemic failures involving many actors and factors, not just the immediate error of the person at the sharp end of the system.

The implications of the systemic understanding of aviation safety for military law are significant. When an aircraft accident results from a systemic failure rather than or in addition to individual error or negligence, the appropriate legal response must address the systemic failures as well as the individual ones. A prosecution that holds only the individual pilot or technician responsible for a failure that was in part the product of inadequate training, poor maintenance infrastructure, excessive fatigue among ground crew, or flawed operational procedures is not merely incomplete in its analysis: it may actively obstruct the systemic learning necessary to prevent future accidents by focusing attention on individual blame rather than systemic improvement.

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CHAPTER TWENTY-TWO: DISHONESTY OFFENCES: FRAUD, FALSE STATEMENTS, FORGERY, AND THE INTEGRITY OF THE INSTITUTION

22.1 The Particular Importance of Honesty in Air Force Operations

Dishonesty in the air force context is not merely a character failing of the individual who commits it. It is a threat to the integrity of systems on which lives depend. The aircraft maintenance log that falsely records a completed inspection, the safety certificate that certifies an unairworthy aircraft as airworthy, the operational report that misrepresents what occurred during a mission: these are not merely fraudulent documents. They are potential instruments of lethal danger.

This is why dishonesty offences occupy a particularly important place in air force law, and why the Air Force Act treats them with corresponding seriousness. The offence framework addressing dishonesty includes making false statements in official documents, impersonation, fraud against the Air Force, and related forms of deception. Each of these provisions serves the goal of maintaining the integrity of the information systems on which air force operations depend.

The integrity of aircraft maintenance records is a matter of particular legal and safety significance. Every aircraft in service should be supported by a complete and accurate record of its maintenance history, including all inspections, repairs, modifications, and component replacements. The reliability and accuracy of these records is critical to the ability of maintenance personnel to identify developing problems, to operations personnel to make informed decisions about aircraft availability and mission fitness, and to accident investigators to determine the causal factors in any accident or incident. The deliberate falsification of maintenance records is accordingly not just a dishonesty offence in the ordinary sense: it is a safety offence of the most serious kind.

22.2 The Offence of Making False Statements in Official Documents

The offence of making a false statement in an official document under the Air Force Act requires proof of several elements: that the accused made a statement, that the statement was false, that the statement was in or in connection with an official document, and, in most formulations, that the statement was made knowingly or without belief in its truth. The requirement of knowledge or recklessness about the truth of the statement distinguishes this offence from the mere making of an erroneous statement in good faith.

The definition of an official document for purposes of this offence is expansive in the air force context. Flight logs, technical documents, medical records, personnel records, duty rosters, operational reports, and financial documents are all official documents within the meaning of the Act, and false statements in any of them may constitute an offence. The breadth of this definition reflects the institutional importance of documentary integrity across the full range of air force functions.

The prosecution of false statement offences in the air force context frequently raises evidentiary questions about the origin of the falsehood. In complex organisational settings, documents are

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often compiled from multiple sources, and it may be genuinely difficult to establish who was responsible for a particular false entry. The question of whether a person who signed or certified a document containing a false statement made by someone else is guilty of the false statement offence depends on whether he knew the statement was false when he signed or certified the document, and this may require careful analysis of the information available to him at the relevant time.

22.3 Impersonation and Its Consequences

The offence of impersonation, presenting oneself as a person of a rank, appointment, or qualification that one does not hold, is a specific form of dishonesty with particular implications in the air force context. An airman who impersonates an officer, a technician who claims qualifications he does not hold, a pilot who presents false credentials: these are instances of impersonation that can have serious consequences for the safety and effectiveness of air force operations.

The most dangerous form of impersonation in the air force context is the false claim of technical qualification. Aircraft maintenance and operation are fields in which specific and documented qualifications are required to perform specific tasks. The requirement that only qualified personnel perform certain functions is not a bureaucratic formality: it is a safety requirement rooted in the recognition that unqualified persons performing safety-critical functions create a risk of catastrophic failure. A person who claims qualifications he does not hold in order to be assigned to a safety-critical function is committing an offence against the safety of the aircraft and its crew as well as against the integrity of the qualification system.

22.4 Financial Fraud and the Integrity of Air Force Resources

Financial fraud against the Air Force, whether through the submission of false claims, the misappropriation of Air Force funds, the manipulation of procurement processes, or other forms of financial dishonesty, represents a form of misconduct that threatens the institutional resources on which operational capability depends. An air force whose resources are being systematically drained by fraud and corruption is an air force whose operational capability is being systematically undermined, since the resources that should be devoted to training, maintenance, and operational readiness are being diverted to the personal benefit of dishonest personnel.

The connection between financial fraud in military institutions and broader issues of corruption and governance is one that has received significant attention in the development literature on security sector reform. The transparency and accountability of military budgets and procurement processes is a matter of significant public interest in any democratic society, and the Air Force's own internal anti-corruption mechanisms, including the legal framework for addressing financial fraud, play an important role in maintaining the institutional integrity that public confidence in the service requires.

Recent developments in anti-corruption law and practice, including the increasing sophistication of forensic accounting techniques, the development of electronic financial management systems that create better audit trails, and the growing international pressure on governments to maintain

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transparent and accountable defence procurement systems, have created both new tools for detecting financial fraud in military institutions and new pressures on those institutions to address it effectively.

CHAPTER TWENTY-THREE: CONDUCT PREJUDICIAL TO GOOD ORDER AND AIR FORCE DISCIPLINE: THE GENERAL ARTICLE AND ITS CONTROVERSIES

23.1 The Nature and Function of the General Conduct Provision

The provision in the Air Force Act prohibiting conduct prejudicial to good order and air force discipline is, in many ways, the most controversial provision in the entire statute. It is the military law equivalent of a constitutional general clause or a civil law principle of good faith: a provision of enormous breadth and flexibility that serves as a residual mechanism for addressing misconduct that falls outside the specific provisions of the Act but that nonetheless threatens the institutional values of the Air Force.

The provision has its historical counterpart in Article 134 of the United States Uniform Code of Military Justice, which has been characterised by American military law scholars as the general article and has generated more litigation, more scholarly commentary, and more jurisprudential controversy than any other provision of American military law. It also corresponds to the similar general conduct provision that has featured in British military law throughout its history and that continues to appear in contemporary British military legislation.

The function served by the general conduct provision is genuine and important. Military service generates forms of misconduct that no drafter of a statute could fully anticipate. The evolution of technology, the changing character of operations, the shifting norms of professional conduct, and the endlessly inventive capacity of human beings to find new ways of behaving badly all mean that a military criminal code that attempted to list every prohibited form of conduct would always be incomplete. The general article fills the gaps, ensuring that no form of seriously damaging misconduct goes unpunished merely because it was not anticipated when the statute was drafted.

But the breadth of the general article creates serious jurisprudential problems. The principle of legality, discussed earlier in this Part, requires that criminal offences be defined with sufficient clarity to give fair notice of what is prohibited. A provision that prohibits conduct prejudicial to good order and discipline without specifying what conduct is prejudicial, or what standard of prejudice is required, arguably fails this test. The accused charged under the general article may not have known that his conduct was prohibited, since the prohibition is not written in any accessible form but exists only in the institutional consciousness of the Air Force.

23.2 The Elements of the Offence: What Must Be Proved

To establish an offence under the general conduct provision, it is necessary to prove several elements. First, the conduct must be identified: the specific acts or omissions of the accused must

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be clearly described and established by evidence. Second, the conduct must be shown to be prejudicial to good order and air force discipline: it must have some real and identifiable adverse effect on the discipline or order of the Air Force, not merely an adverse effect on the sensibilities or preferences of particular officers.

The requirement that the conduct be actually prejudicial, rather than merely offensive or disapproved, is an important limiting principle that prevents the general article from becoming a general prohibition on any conduct that commanding officers dislike. The question of whether specific conduct is prejudicial to good order and discipline is a question of fact that must be determined by reference to the evidence, including evidence about the effect of the conduct on the unit or formation concerned, and not simply by reference to the subjective views of those in command.

In practice, however, the requirement of actual prejudice to discipline has not always been rigorously enforced. Military courts and convening authorities have sometimes been too readily satisfied that conduct which they found offensive or improper was also prejudicial to discipline, without requiring specific evidence of the latter. This conflation of disapproval with disciplinary prejudice is one of the most significant practical abuses of the general article and is a matter to which legal advisers and defence counsel must be alert.

23.3 The General Article and the Criminalisation of Personal Conduct

One of the most contentious applications of the general conduct provision has been its use to criminalise forms of personal conduct that, while arguably objectionable on some account of military propriety, do not obviously or directly affect the operational discipline or effectiveness of the Air Force. The criminalisation of consensual adult sexual conduct, the prohibition of particular forms of personal expression or association, and the punishment of lifestyle choices that offend the mores of the institution but harm no one else: these are areas in which the general article has historically been deployed in ways that raise serious questions about the proper limits of institutional control over the personal lives of service members.

The question of whether military law may legitimately regulate the personal conduct of service members beyond what is necessary for operational effectiveness is one of the most actively debated in contemporary military jurisprudence. The traditional position, rooted in the total institution character of military life described by sociologist Erving Goffman, holds that the military institution's legitimate interest in the character and conduct of its members extends to their entire lives, on duty and off, in uniform and out. The emerging position, influenced by liberal political philosophy, constitutional rights theory, and international human rights standards, holds that the military's legitimate interest is limited to conduct that has a real and demonstrable connection to the member's military duties and performance.

The Bangladesh context requires particular attention in this debate to the constitutional framework. The Constitution of Bangladesh guarantees to all persons, including service members, certain fundamental rights relating to personal liberty, privacy, and dignity. The deployment of the general conduct article to criminalise personal conduct that has no demonstrable effect on military discipline must be tested against these constitutional guarantees,

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and any interpretation of the provision that effectively suspends constitutional rights in the absence of a clear justification of operational necessity should be resisted.

23.4 Recent International Developments: The Limitation of the General Article

International developments in military justice reform provide important context for the analysis of the general conduct provision in Bangladesh Air Force law. In the United States, there has been sustained pressure from legal scholars, civil libertarians, and members of Congress to narrow the scope of Article 134, particularly in its application to personal conduct. The concerns that motivated the Military Justice Act of 2016 and subsequent reforms included, among other things, the perception that the general article was being used to impose a regime of institutional conformism that went well beyond what military discipline legitimately required.

In Canada, the Supreme Court's jurisprudence on the military justice system has increasingly insisted on the application of Charter rights in military proceedings and has been sceptical of broad military law provisions that purport to exempt military courts from ordinary constitutional standards. The Canadian experience suggests that the constitutional scrutiny of broad general conduct provisions is a legitimate and indeed necessary component of a rights-respecting military justice system.

In the United Kingdom, the Armed Forces Act 2006 and subsequent amendments have maintained the general conduct provision while developing more elaborate procedural safeguards and an enhanced appellate framework that provides meaningful independent review of military justice decisions, including those made under broad general provisions. The UK experience suggests that the general article can be maintained within a rights-respecting framework provided that strong procedural protections are in place and that the appellate mechanisms are genuinely capable of correcting errors and abuses.

For Bangladesh, the lessons of these international developments point toward the need for more explicit guidance on the scope and proper application of the general conduct provision, stronger procedural protections for accused persons charged under it, and a more rigorous standard of judicial review of convictions under the provision. These are reforms that can be achieved within the existing constitutional and legislative framework without requiring root-and-branch reform of the Air Force Act, though more comprehensive legislative reform would ultimately be desirable.

CHAPTER TWENTY-FOUR: CIVIL OFFENCES WITHIN MILITARY JURISDICTION: THE INTERFACE OF MILITARY AND CIVILIAN CRIMINAL LAW

24.1 The Concept of Civil Offences Under the Air Force Act

The Air Force Act of 1953 extends military jurisdiction not just over offences that are specifically military in character but also over civil offences committed by persons subject to the Act. The term civil offence in the Act means an offence that would be an offence under the ordinary law of the land if committed by a civilian. In other words, the Act empowers military

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courts to try service members for what would otherwise be civilian crimes, offences against the ordinary criminal law.

This extension of military jurisdiction over civilian crimes is one of the most contested features of military justice systems worldwide. The justification traditionally offered is one of institutional efficiency and discipline: when a service member commits a common crime, it is more practical and more conducive to institutional discipline to deal with the matter within the military system rather than to refer it to civilian courts, which may be remote, unfamiliar with the military context, and less able to impose the specifically military sanctions, such as dismissal from the service, that the institution needs.

But the extension of military jurisdiction over civilian crimes creates significant constitutional and human rights concerns. When a civilian commits a crime, she is tried by civilian courts applying civilian procedures and enjoying the full range of constitutional protections that the justice system provides. When a service member commits the same crime, she may be tried by a military court applying military procedures that provide, in some respects, lesser protections than civilian courts. The service member is, in effect, subjected to a less protective legal regime for the same conduct merely because of her status as a member of the armed forces.

24.2 The Constitutional Dimension: Unequal Treatment Under the Law

The constitutional question raised by the extension of military jurisdiction over civilian crimes is one of equality before the law. The Constitution of Bangladesh guarantees equality before the law and equal protection of the law to all citizens. If service members are subjected to less protective legal proceedings than civilians for the same conduct, and if this inequality cannot be justified by a compelling institutional necessity, it raises a serious constitutional question.

The constitutional justification for the inequality of military justice proceedings relative to civilian proceedings has been the subject of careful scrutiny in various jurisdictions. The United States Supreme Court, in Solorio v. United States (1987), held that military jurisdiction over offences committed by service members does not require any specific military connection to the offence beyond the service member's status. But this decision has been criticised by military law scholars who argue that the service member's status alone cannot justify the wholesale substitution of military justice for civilian justice.

In India, the Supreme Court has taken a somewhat different approach, holding in cases like Ex-Naik Sardar Singh v. Union of India that the extension of military jurisdiction over civilian offences committed by service members is constitutionally permissible provided that the military justice system satisfies minimum standards of fair procedure. The Indian approach, while permissive of extended military jurisdiction, imposes a floor of procedural fairness below which military proceedings cannot fall without violating the Constitution.

For Bangladesh, the appropriate approach should be informed by the constitutional guarantee of equality before the law and the international human rights standards that the country has accepted. A minimum requirement should be that military proceedings dealing with civilian offences satisfy the same basic standards of procedural fairness, including the right to legal

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representation, the right against self-incrimination, and the right to a fair hearing before an impartial adjudicator, that would be required in civilian criminal proceedings.

24.3 Concurrent Jurisdiction and Jurisdictional Conflict

A further complication in the area of civil offences and military jurisdiction is the question of what happens when both military and civilian authorities have jurisdiction over the same conduct. A service member who assaults a civilian, for example, may be subject to prosecution in civilian courts under the ordinary criminal law of assault, and may also be subject to prosecution in military courts under both the civil offence provision and, if the assault also constitutes conduct prejudicial to good order and discipline, under the general conduct provision of the Air Force Act.

The potential for dual proceedings in both civilian and military courts raises issues of double jeopardy. The constitutional protection against double jeopardy, reflected in Article 35(2) of the Bangladesh Constitution, prohibits the prosecution and punishment of a person twice for the same offence. The question of whether civilian and military proceedings for the same conduct constitute prosecution for the same offence is a complex one that has been resolved differently in different jurisdictions.

The general principle that has emerged in military jurisprudence is that the military and civilian justice systems are separate jurisdictions, and that proceedings in one do not necessarily bar proceedings in the other. But this principle, while providing clarity for jurisdictional management, does not resolve the fairness concern that underlies the double jeopardy principle: the concern that a person should not be subjected to the full burden of criminal proceedings more than once for the same conduct.

The practical management of concurrent jurisdiction requires coordination between military and civilian authorities, clear guidelines about which cases should be dealt with by which system, and a commitment to avoiding the use of dual jurisdiction as a mechanism for pursuing service members through multiple proceedings when a single proceeding would be adequate. These practical requirements are not always met in practice, and the development of clearer institutional protocols for managing concurrent jurisdiction is an important reform priority.

CHAPTER TWENTY-FIVE: THE PUNISHMENT FRAMEWORK: PHILOSOPHY, SCALE, AND PROPORTIONALITY

25.1 The Scale of Punishments Under the Air Force Act

The Air Force Act establishes a hierarchy of punishments that reflects the gradation of severity among different offences and different offenders. The scale of punishments available under the Act includes, at the most severe end, death, and then imprisonment for specified terms, cashiering, dismissal from the service, forfeiture of seniority, reduction to a lower rank, forfeiture of pay, and various lesser disciplinary measures.

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The death penalty is prescribed for a small number of the most serious offences under the Act, including mutiny involving violence, cowardice in the face of the enemy, and treachery. The continued existence of the death penalty in Bangladesh Air Force law is a matter that deserves sustained critical attention. The death penalty is the most extreme punishment available under any legal system, irreversible in its consequences and, as the history of capital punishment worldwide demonstrates, subject to the risk of error in individual cases. The international human rights movement has consistently and increasingly pressed for the abolition of the death penalty, and the United Nations Human Rights Committee has expressed the view that states parties to the International Covenant on Civil and Political Rights should take steps toward abolition.

The retention of the death penalty in military law, even for the most serious military offences, must be justified on terms that can withstand rigorous scrutiny. The argument that the death penalty provides uniquely powerful deterrence to the most serious military misconduct is an empirical claim that is, to say the least, not clearly supported by the available evidence. The argument that the death penalty is necessary to express the ultimate seriousness of the most serious military offences has more force, but it may be adequately served by other forms of severe punishment, including life imprisonment, without the irreversibility and the human rights costs of the death penalty.

25.2 Cashiering and Dismissal: The Military Penalty of Social Death

Cashiering and dismissal from the service are distinctly military punishments with no precise civilian equivalent. Cashiering is the most severe form of discharge from the service, involving not just the removal of the person from military employment but a formal ceremony of disgrace that strips the person of their commission, their insignia of rank, and their membership of the military community. Dismissal is less formal but carries similar consequences in terms of the loss of military status and, crucially, the loss of entitlement to pension and other service benefits.

The distinctive character of cashiering and dismissal as punishments reflects the nature of military service as a form of life that involves membership in a community, a sense of professional identity, and a set of social relationships that are fundamental to the service member's self-understanding. To be cashiered is not merely to lose one's job: it is to be excluded from a community and to have one's professional identity destroyed. The social consequences of cashiering extend well beyond the individual to their family, and the stigma attached to cashiering persists long after the formal ceremony of dismissal.

The philosophical analysis of cashiering as a punishment must grapple with the question of whether a punishment that inflicts what amounts to social death, the destruction of the person's professional identity, reputation, and social standing, is proportionate even to serious military misconduct. Proportionality in punishment, which is a well-established principle of both military and civilian penal philosophy, requires that the punishment not be grossly in excess of what is warranted by the offence. The question of whether cashiering is always proportionate to the offences for which it is imposed, or whether it is sometimes disproportionate in its social consequences, is one that deserves ongoing attention.

25.3 The Principle of Proportionality in Military Sentencing

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The principle of proportionality, that punishment should be proportionate to the offence, is a foundational principle of any just penal system. In the military context, the principle of proportionality must be applied with sensitivity to the specific features of the military environment: the heightened institutional stakes of misconduct, the importance of maintaining discipline across the entire service, and the potential for individual misconduct to have consequences extending well beyond the immediate harm caused.

But the principle of proportionality also requires that these institutional considerations not be used to justify punishments that are grossly excessive in relation to the individual's personal culpability. A sentence of severe punishment for a minor infraction, on the theory that exemplary punishment is needed to maintain general discipline, may serve institutional goals at the expense of individual justice. The tension between individual justice and institutional discipline in military sentencing is one of the most persistent challenges in military law.

Recent developments in military justice in comparable jurisdictions have moved in the direction of greater attention to individual circumstances in sentencing, including the consideration of mitigating factors relating to the offender's background, mental health, family circumstances, and military record. The United States reforms of 2023 that vested sentencing authority in the military judge rather than the panel, noted earlier in this Part, were partly motivated by the desire to achieve more consistent and principled sentencing that is less susceptible to the emotional dynamics of panel deliberation. The development of sentencing guidelines and structured sentencing frameworks in military justice systems is a reform that Bangladesh could usefully consider.

25.4 Non-Punitive Measures and the Alternative to Court Martial

One of the most important developments in contemporary military justice thinking is the growing recognition that many instances of military misconduct are best dealt with through non-punitive measures rather than through formal criminal proceedings. The development of administrative sanctions, counselling, rehabilitation programmes, and diversion mechanisms as alternatives to court martial reflects a more sophisticated understanding of the causes of military misconduct and a more nuanced approach to promoting discipline through means other than punishment.

The Air Force Act provides for summary punishment by commanding officers for minor offences, without the formality of a court martial. This summary punishment mechanism serves an important function in dealing with routine minor misconduct without the delay, expense, and collateral consequences of formal proceedings. But the summary punishment mechanism also raises concerns about fairness, since it involves less procedural protection than court martial proceedings and may be subject to the biases and preferences of individual commanding officers.

The development of diversionary mechanisms for dealing with minor misconduct, including formal cautions, counselling referrals, and remedial training, is an area in which Bangladesh Air Force law has significant room for development. A service member who has committed a minor first offence, driven by circumstances that have been addressed or that reflect on the institution rather than simply on the individual, may be better served by a constructive response than by

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formal punishment, and the institution may be better served by retaining the services of a person who can be rehabilitated rather than by dismissing or imprisoning them.

CHAPTER TWENTY-SIX: INVESTIGATION, ARREST, AND PRE-TRIAL PROCEDURE: THE RIGHTS OF THE ACCUSED BEFORE TRIAL

26.1 The Legal Framework for Military Investigations

The investigation of alleged offences under the Air Force Act is governed by a framework of rules and practices that determines how information is gathered, how witnesses are interviewed, how evidence is collected, and how decisions are made about whether and how to proceed with formal charges. The quality of military investigations, and the extent to which they comply with the rights of those being investigated, is one of the most important determinants of the overall fairness of the military justice system.

The Air Force Act and its associated rules provide for the preliminary investigation of alleged offences by commanding officers, the detailed investigation by specifically designated investigating officers, and the various procedures through which evidence is gathered and evaluated before a decision is made to proceed to court martial or to deal with the matter summarily. These procedures are not always clearly specified in the Act itself, relying instead on the accumulated practice of military administration and the guidance provided in Air Force Regulations and Standing Orders.

The right of a person under investigation to know the nature of the allegations against him, to have access to legal advice, and to participate meaningfully in the investigative process before formal charges are laid is an important element of procedural fairness that is not always adequately protected in the current framework of Bangladesh Air Force law. International standards of fair procedure, as reflected in the International Covenant on Civil and Political Rights and its interpretation by the United Nations Human Rights Committee, require that persons subject to criminal investigation be informed of the nature of the investigation, be given the opportunity to respond to allegations, and have access to legal assistance.

26.2 Arrest and Custody Under the Air Force Act

The Air Force Act provides for the arrest and custody of persons suspected of offences in ways that depart significantly from the protections available to civilians under the ordinary law. The concept of air force custody includes both formal arrest and the various informal forms of restriction on movement that commanding officers may impose on personnel under investigation or awaiting trial.

The power of arrest under the Air Force Act is broad. A commissioned officer may be placed in arrest by a superior officer, and the circumstances in which arrest is justified are defined in terms that give considerable discretion to the arresting authority. The duration of custody pending trial is not always clearly limited, and the procedural protections available to persons in military

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custody are less extensive than those available to persons in civilian custody under the ordinary law.

The constitutional guarantee of personal liberty under Article 32 of the Bangladesh Constitution, which provides that no person shall be deprived of his life or personal liberty except in accordance with law, applies to military custody as well as to civilian detention. The question of what protections law requires in the context of military arrest and custody is one that has not been systematically addressed in Bangladesh jurisprudence, but it is one that deserves careful attention in light of international human rights standards and the constitutional framework.

26.3 The Right to Legal Representation in Pre-Trial Proceedings

The right to legal representation is one of the most fundamental protections available to a person subject to criminal proceedings, civilian or military. The right to have a lawyer's assistance in preparing a defence, in challenging the admissibility of evidence, in cross-examining witnesses, and in making submissions on law and fact is a core element of the right to a fair trial that is guaranteed by the Constitution and by international human rights instruments.

The availability of legal representation in military proceedings under Bangladesh Air Force law is an area of genuine concern. The Air Force Act provides for the right of accused persons to be defended by a legal officer of the Air Force at courts martial, and accused persons may also engage civilian legal practitioners. But the availability of legal advice and representation during the investigative phase of proceedings, before formal charges are laid, is less clearly established, and the quality of the legal representation available within the military system may not always be adequate to the complexity of the cases involved.

The development of a fully professional military legal service, with properly trained and properly resourced legal officers capable of providing effective representation to accused persons as well as advice to commanding officers, is an important institutional priority for Bangladesh Air Force law. The model of the Judge Advocate General's Corps in the United Kingdom and the United States, in which legally qualified officers provide independent legal services both to the prosecution and to the defence, provides a useful reference point for the development of the Bangladesh Air Force's own legal capacity.

26.4 Evidence Rules in Military Proceedings

The rules of evidence applicable in military proceedings under the Air Force Act are a matter of considerable practical importance and jurisprudential interest. The rules of evidence determine what information can be placed before the tribunal, how that information must be authenticated, how the credibility of witnesses is assessed, and what standard of proof must be satisfied before a finding of guilt can be made.

The Air Force Act and its rules incorporate aspects of the general law of evidence as applied in Bangladesh courts, with modifications appropriate to the military context. The general principle that evidence must be relevant and reliable, that hearsay evidence is generally inadmissible (with various exceptions), and that the prosecution bears the burden of proving its case beyond

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reasonable doubt all apply in military proceedings. But the application of these principles in the specific circumstances of military proceedings raises distinctive questions.

One particularly significant evidentiary issue in the military context is the treatment of confessions and admissions made during military investigations. The rule against coerced confessions, which is well established in civilian law and is constitutionally mandated by the protection against self-incrimination, must apply with equal force in military investigations. The military environment, with its hierarchical pressures, its culture of obedience, and the power that superior officers exercise over the careers and wellbeing of subordinates, creates conditions in which the voluntariness of statements made to investigating officers may be genuinely questionable. The rules for assessing the admissibility of statements made in military investigations must be sufficiently robust to exclude statements that were obtained through improper pressure or inducement.

CHAPTER TWENTY-SEVEN: COMPARATIVE ANALYSIS AND RECENT INTERNATIONAL DEVELOPMENTS IN MILITARY OFFENCE PROVISIONS

27.1 The United States Uniform Code of Military Justice and the 2023 Reforms

The United States military justice system, operating under the Uniform Code of Military Justice, is the most extensively studied and most frequently reformed military justice system in the world, and the lessons of its development are directly relevant to the analysis of Bangladesh Air Force law. The reforms of 2023, implementing the sentencing changes required by the Military Justice Act of 2016, represent the most recent major development in a system that has undergone continuous reform since the UCMJ was enacted in 1950.

The central features of the UCMJ that are relevant to comparison with Bangladesh Air Force law include its punitive articles, which correspond to the offence provisions of the Air Force Act. The UCMJ contains a comprehensive list of specific military offences, including mutiny, desertion, cowardice, insubordination, AWOL, and the various operational offences, as well as the famous general article. The experience of American military law in interpreting and applying these provisions over more than seventy years provides an invaluable source of jurisprudential insight for the development of Bangladesh Air Force law.

The 2023 reform of military sentencing in the United States, which transferred sentencing authority from the court martial panel to the military judge in non-capital cases, represents a significant shift in the balance between lay and professional judgment in military justice. The rationale for this reform, which was that sentencing by military judges would produce more consistent and more principled outcomes than sentencing by panels of officers, reflects a broader trend in criminal justice reform toward structured and professional sentencing. Whether a similar reform would be appropriate in the Bangladesh context is a question that deserves serious consideration.

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The treatment of sexual assault offences in the American military justice system has been one of the most contentious and most rapidly evolving areas of military law reform in recent years. The Military Justice Improvement Act proposals and the subsequent reforms that established the Special Victims' Counsel programme and removed prosecutorial authority for certain sexual offence cases from the chain of command represent a major restructuring of the relationship between command authority and prosecutorial independence in the American system. These reforms reflect a recognition that the command-controlled military justice system was not adequately protecting the rights and interests of sexual assault victims, and that structural reforms were necessary to address this failure.

For Bangladesh Air Force law, the American experience with sexual assault reform provides important lessons about the systemic risks of a justice system that is too closely controlled by command authority and about the reforms that may be necessary to ensure that all forms of serious misconduct, including sexual misconduct, are addressed effectively and with appropriate sensitivity to the rights and interests of victims.

27.2 The Pakistani Experience: Military Courts, Civilian Trials, and Constitutional Controversy

The experience of Pakistan's military justice system in 2023, 2024, and 2025 provides a cautionary tale about the consequences of extending military court jurisdiction over civilians in ways that conflict with constitutional and international human rights standards. The trial of civilians by military courts for offences related to the events of May 9, 2023, the arrest of Imran Khan and the subsequent protests, drew fierce condemnation from the international human rights community, the International Commission of Jurists, and domestic legal practitioners.

The Supreme Court of Pakistan's landmark ruling in October 2023 striking down the military trials of civilians as unconstitutional, and the subsequent reversal of that ruling by a larger bench, represent one of the most dramatic constitutional confrontations between civilian judicial authority and military institutional power in the region's recent history. The events demonstrate the risks that arise when military justice mechanisms are deployed against civilians in ways that lack constitutional legitimacy and procedural fairness, and the reputational and institutional costs that such deployment carries.

For Bangladesh, the Pakistani experience is instructive in several ways. First, it illustrates the constitutional fragility of military jurisdiction over civilians and the importance of ensuring that the boundaries of military justice are clearly and constitutionally defined. Second, it demonstrates the reputational consequences for the armed forces when the military justice system is perceived as a tool of political control rather than a mechanism of genuine justice. Third, it provides a contemporary example of the kind of institutional crisis that can arise when the military justice system loses the confidence of the public, the judiciary, and the international community.

Bangladesh has its own complex history with the relationship between military authority and civilian constitutional order, a history that was partly addressed in Part One. The lessons of the Pakistani experience reinforce the importance of maintaining the Bangladesh Air Force's military

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justice system firmly within the boundaries of constitutional and international law, and of resisting any temptation to deploy that system for purposes that go beyond its genuine institutional function.

27.3 The South Korean Martial Law Crisis of 2024 and Its Lessons for Military Law

In December 2024, President Yoon Suk-yeol of South Korea declared emergency martial law, an act that was rapidly reversed by the National Assembly and that resulted in the President's impeachment and subsequent criminal prosecution. The episode, which culminated in a series of criminal convictions of senior officials in 2025 and 2026, represents one of the most dramatic confrontations between executive military power and constitutional civilian authority in the democratic world in recent years.

The South Korean martial law crisis illustrates several principles of military law jurisprudence that have direct relevance for Bangladesh. First, it demonstrates that even in a mature democracy with a sophisticated legal system, the temptation to deploy military power to resolve political crises is not purely historical. Second, it demonstrates that constitutional systems with robust legislative and judicial mechanisms can effectively resist and reverse illegal exercises of military power. Third, it demonstrates that those who issue and execute unlawful military orders bear individual criminal responsibility for their consequences.

The criminal accountability of officials who participated in the December 2024 martial law declaration, established through South Korean civilian courts in 2025 and 2026, provides a contemporary illustration of the principle that military authority is constitutionally bounded and that violations of those boundaries attract both constitutional sanction and individual criminal liability. This principle is as relevant to Bangladesh, which has its own experience of contested exercises of military authority, as it is to any other constitutional democracy.

The South Korean experience also illustrates the importance of military institutional culture in supporting or resisting unconstitutional exercises of authority. The fact that significant numbers of military personnel refused to participate in the martial law declaration, or participated only reluctantly and partially, suggests that a military culture that internalises constitutional values can serve as an important check on the abuse of military power. The development of such a culture within the Bangladesh Air Force, through legal education, professional ethics training, and institutional leadership, is an important dimension of the rule-of-law agenda for the service.

27.4 The British Armed Forces and the Evolving Law of Military Discipline

The United Kingdom, as the primary source of the colonial legal inheritance on which Bangladesh Air Force law is built, continues to provide relevant comparative material for the analysis and development of Bangladesh military law. The British Armed Forces Act 2006, and the subsequent amendments made by Armed Forces Acts 2011, 2016, and 2021, have progressively modernised British military law in directions that are instructive for Bangladesh.

The most significant features of contemporary British military law from the perspective of Bangladesh include the development of a Service Complaints Commissioner with powers to

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investigate complaints about the handling of service complaints, the enhancement of legal representation rights for accused persons in service courts, the development of a more robust appellate framework through the Court Martial Appeal Court and the possibility of further appeal to the Court of Appeal, and the explicit application of the Human Rights Act 1998 and its European Convention rights to service proceedings.

The British experience with the Service Complaints Commissioner is particularly relevant to Bangladesh, where the mechanism for handling complaints by service personnel about their treatment within the institution is relatively underdeveloped. The Commissioner model, which involves an independent oversight body with powers to investigate complaints and make recommendations, provides a form of external accountability for the military justice system without directly substituting civilian judicial oversight for military judgment. This model might usefully inform the development of Bangladesh Air Force law.

27.5 International Humanitarian Law and Its Interaction with Air Force Offence Provisions

The interaction between the offence provisions of the Air Force Act and the requirements of international humanitarian law is a dimension of Bangladesh Air Force law that has grown in importance as Bangladesh's international military commitments have expanded. Bangladesh is one of the world's largest contributors of personnel to United Nations peacekeeping operations, and the conduct of Bangladesh Air Force personnel in peacekeeping contexts is governed by a complex framework that includes both the Air Force Act and the requirements of international humanitarian law.

The fundamental principle of international humanitarian law, that parties to armed conflict are bound by obligations of humanity even in the conduct of hostilities, creates specific requirements for the conduct of air force operations that interact with the offence provisions of the Air Force Act in important ways. The prohibition of attacks on civilians and civilian objects, the requirement of proportionality in attack, the obligation to take precautions to minimise civilian casualties, and the prohibition of methods of warfare that cause unnecessary suffering: all of these requirements impose constraints on the conduct of air force operations that must be reflected in the interpretation and application of the Act's operational offence provisions.

The emergence of autonomous weapons systems, armed drones, and other technologies that reduce or eliminate the role of human judgment in individual targeting decisions creates new and urgent questions about the application of international humanitarian law to air force operations that are only beginning to be addressed in the international legal literature. The Bangladesh Air Force's engagement with these technologies, and the legal framework governing their use, is an area in which significant development of both policy and law will be required in the coming years.

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CHAPTER TWENTY-EIGHT: THE PHILOSOPHY OF MILITARY PUNISHMENT REVISITED: CAPITAL PUNISHMENT, PROPORTIONALITY, AND HUMAN DIGNITY

28.1 The Death Penalty in Military Law: A Critical Examination

The presence of the death penalty in the Bangladesh Air Force Act, as the maximum punishment for the most serious military offences, requires sustained critical examination that goes beyond the conventional legal analysis of when and how the penalty may be imposed. The death penalty is not merely a legal provision: it is a statement about the value of human life, the nature of justice, and the limits of institutional authority that touches the deepest questions of political philosophy and human rights.

The argument for the death penalty in military law rests on a combination of deterrent and expressivist grounds. The deterrent argument holds that the death penalty provides a uniquely powerful incentive against the most serious military misconduct, since death is the ultimate sanction against which there is no recovery. The expressivist argument holds that some forms of military misconduct, most notably mutiny involving violence, cowardice that leads to the deaths of comrades, and treachery, are so profoundly wrong and so fundamentally destructive of the military community that only the most extreme sanction can adequately express the community's condemnation.

But both of these arguments face serious objections. The deterrent argument for the death penalty has been extensively studied in the civilian context and has been found wanting: there is no reliable evidence that the death penalty deters crime more effectively than other severe punishments, and in the military context, where the most serious offences often occur in conditions of extreme stress, fear, or psychological impairment that may substantially override rational cost-benefit calculation, the deterrent argument is even less persuasive.

The expressivist argument for the death penalty in military law confuses the severity of the offence with the necessity of the most severe sanction. An institution can express its unequivocal condemnation of the most serious forms of misconduct through punishments short of death, including indefinite imprisonment and permanent exclusion from the service. The claim that only death is an adequate expression of condemnation for even the worst military misconduct is one that requires much stronger philosophical justification than is typically offered.

The human rights argument against the death penalty is by now well established in international law and policy. The United Nations Human Rights Committee has consistently held that the death penalty should only be applied for the most serious crimes, generally understood as crimes involving intentional killing, and has advocated for progressive restriction and ultimately abolition of the penalty. The Committee Against Torture and the Special Rapporteur on Extrajudicial Executions have similarly expressed strong opposition to capital punishment. Bangladesh, as a member of the United Nations and a state party to international human rights instruments, is expected to take these international standards seriously in its domestic law.

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The reform of Bangladesh Air Force law to eliminate or severely restrict the death penalty, confining it at most to cases of deliberate killing or treason involving violence and loss of life, would represent a significant step toward alignment with international human rights standards and would reflect the kind of mature legal confidence in the adequacy of non-capital sanctions that characterises the most respected military justice systems in the world.

28.2 Degrading Punishment and Human Dignity: Corporal Punishment, Collective Punishment, and Related Issues

The prohibition of degrading punishment, punishment that humiliates or degrades the person beyond what is inherent in any form of legal sanction, is a well-established principle of international human rights law and is increasingly recognised as a component of constitutionally mandated human dignity. For Bangladesh Air Force law, this principle has implications for several traditional forms of military punishment that, while no longer formally prescribed in the Act, may persist as informal practices.

Corporal punishment, the infliction of physical pain as a form of military discipline, is formally excluded from the framework of punishments prescribed by the Air Force Act for the conduct of court martial proceedings and summary proceedings. But informal physical punishment, in the form of punitive physical exercise, confinement in uncomfortable conditions, or physical abuse by superior officers, remains a concern in military institutions worldwide, including in the South Asian region. The prohibition of such practices requires not just formal legal exclusion but active enforcement through the channels of complaint and investigation that the military justice system provides.

Collective punishment, the imposition of sanctions on an entire unit for the misconduct of individual members, is prohibited by international humanitarian law and is inconsistent with the fundamental principle of individual criminal responsibility. The temptation to impose collective sanctions on units whose members have been found to have engaged in misconduct is understandable from the institutional perspective of maintaining collective discipline, but it violates the basic principle that punishment must be proportionate to individual culpability and must not be imposed on those who have not personally committed the offence.

The development of a culture of respect for human dignity within the Bangladesh Air Force, which is the institutional prerequisite for the elimination of degrading and collective punishment, requires leadership commitment at the highest levels, effective investigation and disciplinary mechanisms for abuses, and a system of complaint and redress that empowers personnel to report mistreatment without fear of retaliation.

CHAPTER TWENTY-NINE: THE EMERGING FRONTIER: DIGITAL OFFENCES, CYBER CONDUCT, AND THE LAW OF NEW TECHNOLOGIES

29.1 The Challenge of Digital Misconduct for Military Law

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The digital transformation of military operations and communications has created an entirely new frontier for military law, one that the drafters of the Air Force Act of 1953 could not have imagined and that the existing provisions of the Act address only imperfectly. Air force personnel now routinely operate in a digital environment that includes secure and insecure communications networks, social media platforms, encrypted messaging services, cloud-based operational systems, and cyber capabilities that can be deployed both defensively and offensively. The forms of misconduct possible in this environment are correspondingly diverse and require legal analysis that goes well beyond what the existing offence framework provides.

The most immediate challenge is the adaptation of existing offence categories to digital conduct. The offence of making a false statement in an official document, for example, must clearly extend to false entries in digital records and electronic documents. The offence of communicating with unauthorised parties must extend to communications made through digital means, including social media, encrypted messaging, and electronic mail. The offence of prejudice to good order and discipline must extend to online conduct that damages the reputation of the service, undermines unit cohesion, or compromises operational security.

But digital misconduct also creates entirely new forms of offence that the existing categories do not adequately address. The leaking of classified information through digital channels, the unauthorised access to secure computer systems, the creation and distribution of malicious code that could affect Air Force operational systems, and the use of social media to recruit personnel to extremist causes or to compromise their loyalty: these are forms of misconduct that require specific legal treatment rather than mere extension of existing categories.

29.2 Social Media and the Discipline of Online Conduct

Social media presents a distinctive challenge for military law because it is simultaneously a platform for personal expression that personnel engage with in their private lives and a potential vehicle for conduct that has institutional consequences ranging from minor embarrassment to serious security compromise. The regulation of service members' social media conduct is one of the most actively debated topics in contemporary military law, and the approach taken by various armed forces illustrates the range of possible responses.

The United States military has developed detailed regulations governing the social media conduct of service members, including prohibitions on posting classified information, restrictions on posting material that is critical of civilian leadership or that could embarrass the armed forces, and requirements for appropriate behaviour in online communications. These regulations have been challenged in some instances on free speech grounds, and the courts have been required to balance the service member's constitutional rights against the institutional interests of the military.

In Bangladesh, the constitutional guarantee of freedom of expression in Article 39 is subject to reasonable restrictions in the interests of national security and public order. The question of what restrictions on military personnel's social media conduct can be justified as reasonable within this constitutional framework is one that has not yet been the subject of systematic legal analysis. The

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development of a clear and constitutionally grounded policy on service members' social media conduct is a priority for Bangladesh Air Force law in the current technological environment.

The security dimensions of social media conduct deserve particular attention. Air force personnel routinely possess knowledge of classified operational information, aircraft capabilities, base locations, personnel dispositions, and other sensitive information. The inadvertent or deliberate disclosure of such information through social media poses a genuine security risk that the law must address. The Official Secrets Act 1923, which applies to service personnel along with the Air Force Act, provides some legal framework for addressing deliberate disclosures, but its application to the nuanced world of social media communications requires careful analysis and, in some cases, specific regulatory guidance.

29.3 Cyber Operations and the Laws of Armed Conflict

The Bangladesh Air Force's emerging cyber capabilities, referenced in the strategic modernisation literature discussed at the beginning of this Part, raise profound legal questions about the application of the laws of armed conflict to cyber operations. The key question is whether and when cyber operations constitute the use of armed force within the meaning of international law, and what rules of international humanitarian law apply to cyber operations that do constitute the use of armed force.

The Tallinn Manual, developed by international legal experts under the auspices of the NATO Cooperative Cyber Defence Centre of Excellence, provides the most comprehensive academic analysis of the application of international law to cyber operations, including the laws of armed conflict. The Manual has been revised and updated (Tallinn Manual 2.0 was published in 2017) and represents the most authoritative statement of expert opinion on a legal area that national governments and international organisations have been slow to address definitively.

For Bangladesh Air Force personnel involved in cyber operations, the legal framework within which they must operate is complex, evolving, and not fully settled. The general principles of international humanitarian law, including distinction, proportionality, and precaution, apply to cyber operations that constitute the use of armed force. The Air Force Act's offence provisions, to the extent that they address the conduct of operations, must be understood as applying to cyber operations as well as conventional ones. But the specific content of these obligations in the cyber context requires careful legal analysis that goes beyond anything currently addressed in Bangladesh Air Force legal training.

29.4 Unmanned Systems, Autonomous Weapons, and Individual Responsibility

The growing use of unmanned aerial vehicles and the development of autonomous weapons systems by major air forces around the world raises questions about the application of military law, including the offence provisions relating to operational conduct, to situations where the decisions to use force are made by machines rather than by human beings. The Bangladesh Air Force's emerging engagement with drone technology and the broader strategic discussion about advanced capabilities including autonomous systems make this a relevant and urgent legal issue.

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The fundamental principle of individual responsibility in military law, the principle that criminal responsibility for military misconduct attaches to individual human beings who make decisions to act unlawfully, is under pressure from the development of weapons systems that make targeting decisions without direct human involvement. If a lethal autonomous weapon system kills civilians in violation of international humanitarian law, who bears the legal responsibility: the officer who deployed the system, the engineer who programmed it, the military leadership that authorised its use, or no one?

These questions, which are the subject of intense academic and policy debate in the international law community, have direct implications for the interpretation and application of the Air Force Act's offence provisions in an era of increasing automation of air force operations. The development of clear legal principles governing the deployment of autonomous systems, and the mechanisms for establishing accountability when such systems cause unlawful harm, is among the most important legal challenges facing air force law in the twenty-first century.

CHAPTER THIRTY: THE GENDERED DIMENSIONS OF AIR FORCE OFFENCES: SEXUAL MISCONDUCT, HARASSMENT, AND INSTITUTIONAL ACCOUNTABILITY

30.1 Sexual Offences in the Military Context

Sexual misconduct within military institutions, including sexual harassment, sexual assault, and related forms of gender-based violence, has emerged as one of the most significant challenges for military justice systems worldwide. The particular combination of factors present in military institutions, including hierarchical power structures, the predominantly male culture of many armed forces, the isolation of service from civilian social networks, and the dependence of personnel on institutional structures for their career progress and personal safety, creates conditions in which sexual misconduct can occur frequently and in which victims may be particularly vulnerable and particularly reluctant to report.

The Air Force Act of 1953, as a product of its historical period, does not contain specific provisions addressing sexual harassment, sexual misconduct, or gender-based violence within the service. The general conduct provision and the civil offence framework can be deployed to address these forms of misconduct, but the absence of specific provisions creates uncertainty about applicable standards, applicable procedures, and the institutional priority attached to addressing these forms of harm.

International developments in military justice reform have placed the treatment of sexual misconduct within the military justice system at the centre of law reform debates. In the United States, the reforms of the 2021 and subsequent National Defense Authorization Acts, which created the Special Victims' Counsel programme and removed prosecutorial authority for sexual assault cases from the chain of command in favour of an independent special trial counsel, represent a fundamental restructuring of how the military justice system handles sexual offences. In Canada, the 2021 review of the military justice system led by former Supreme Court Justice

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Louise Arbour recommended sweeping reforms to the handling of sexual misconduct within the Canadian Armed Forces.

For Bangladesh, the legal and institutional framework for addressing sexual misconduct within the Air Force is inadequate by the standards that contemporary jurisprudence, international human rights norms, and basic institutional integrity require. The development of specific legal provisions addressing sexual harassment and assault, the establishment of independent complaint and investigation mechanisms for gender-based violence within the service, and the development of a comprehensive training and awareness programme for all personnel are essential reform priorities.

30.2 The Command Climate and the Culture of Institutional Accountability

The treatment of sexual misconduct within military institutions illustrates a broader challenge in military law: the challenge of establishing genuine institutional accountability for forms of misconduct that may be systemic rather than individual in character. When sexual harassment is pervasive in a military unit, when it is known to leadership and tolerated or ignored, when victims are discouraged from reporting through informal pressure or fear of retaliation: the problem is not merely a problem of individual misconduct but of institutional culture and leadership failure.

Military law, with its focus on individual criminal responsibility for specific acts, is not well designed to address systemic institutional failures of this kind. The criminal prosecution of individual perpetrators is a necessary but not sufficient response to a culture of sexual misconduct: it may remove the individual offender from the institution but does not address the conditions that enabled and tolerated the misconduct.

The development of institutional accountability mechanisms that go beyond individual criminal prosecution, including command accountability for the climate of units under their charge, performance evaluation criteria that include assessment of leadership in preventing and addressing misconduct, and independent oversight mechanisms with powers to investigate systemic failures and recommend institutional changes, is an important complement to the individual criminal accountability provided by the Air Force Act.

30.3 Gender Integration and the Evolving Legal Framework

The Bangladesh Air Force, like armed forces worldwide, has been engaged in a process of greater integration of women into its ranks and into a broader range of roles, including flying roles, that were historically restricted to men. This process of gender integration creates legal and institutional challenges that interact with the offence framework of the Air Force Act in ways that deserve attention.

The equal treatment of male and female personnel under the law is both a constitutional requirement and an institutional priority for an air force that aspires to draw on the full talent of the population it serves. The offence provisions of the Act must be applied without

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discrimination on grounds of gender, and the procedures of the military justice system must be equally accessible and equally fair to personnel of all genders.

The particular vulnerability of women in military institutions to gender-based misconduct, combined with the institutional barriers that have historically discouraged reporting and accountability, means that achieving genuine gender equality in the application of military law requires more than formal legal neutrality. It requires active institutional efforts to remove barriers to reporting, to ensure fair investigation of complaints, to protect complainants from retaliation, and to hold accountable not just individual perpetrators but also those in leadership positions who fail to prevent or address misconduct.

CHAPTER THIRTY-ONE: WHISTLEBLOWING, DISSENT, AND THE LIMITS OF INSTITUTIONAL LOYALTY

31.1 The Problem of Military Whistleblowing

One of the most philosophically and practically complex issues in military law is the treatment of personnel who seek to expose misconduct, incompetence, or unlawful conduct within the institution through channels other than those provided by the official military hierarchy. The military whistleblower occupies a paradoxical position: she may be acting in the public interest and in the long-term interests of the institution by exposing genuine wrongdoing, but the act of disclosure may constitute offences under military law, including the offence of communicating information to unauthorised parties or conduct prejudicial to good order and discipline.

The tension between the military's need for confidentiality and the public's interest in accountability for institutional misconduct is not unique to military institutions. But it takes a particularly sharp form in the military context because of the enormous power that military institutions exercise and the potential for serious harm, including harm to democratic governance and to individual rights, when that power is abused and concealed.

The international literature on military whistleblowing has grown substantially in recent years, partly in response to high-profile cases such as those involving Chelsea Manning and Edward Snowden in the United States, partly in response to the development of international whistleblower protection standards, and partly in response to the growing recognition that effective institutional accountability requires channels through which those with knowledge of wrongdoing can report it safely.

For Bangladesh, the question of how the Air Force Act's provisions relating to disclosure of information and conduct prejudicial to discipline should be applied to personnel who seek to report genuine institutional wrongdoing is one of genuine difficulty and importance. The Air Force Act does not contain any provision specifically protecting personnel who report misconduct in good faith through appropriate channels, and the absence of such protection is a significant gap in the legal framework.

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31.2 Conscientious Objection and the Limits of Military Obligation

The question of conscientious objection to specific military orders or operations, as distinct from conscientious objection to military service as such, is one that the Air Force Act addresses only by implication through the framework of the superior orders doctrine. A person who refuses to carry out a specific order on conscientious grounds, believing that the order requires him to participate in conduct that is morally wrong or legally impermissible, is engaging in a form of selective objection that military law traditionally treats with less sympathy than it treats the objection of those who refuse military service altogether on grounds of absolute pacifism.

The philosophical analysis of conscientious objection in the military context draws on a rich tradition of moral philosophy, including the work of John Rawls on civil disobedience and conscientious refusal, the Nuremberg principle on the limits of superior orders, and the emerging literature on military professional ethics that distinguishes between the obligations of the professional soldier as a technician of violence and the obligations of the soldier as a moral agent.

The practical question for Bangladesh Air Force law is how to deal with personnel who refuse specific orders on grounds of conscience. The current framework, which treats disobedience as an offence without explicit provision for conscientious objection, is inadequate to the complexity of the moral reality of military service. The development of explicit institutional procedures for raising conscientious objections, and for adjudicating them fairly and transparently, is an important reform that would strengthen both the moral credibility and the legal coherence of Bangladesh Air Force law.

CHAPTER THIRTY-TWO: CONCLUSION TO PART TWO: THE OFFENCE FRAMEWORK IN PERSPECTIVE

32.1 What the Analysis of Offence Provisions Reveals

The detailed examination of the offence provisions of the Bangladesh Air Force Act conducted in this second Part of the handbook reveals several important truths about the current state of Bangladesh Air Force law and the direction in which it needs to develop.

The first truth is that the existing offence framework, inherited from colonial British military law through the Pakistan Air Force Act, is coherent and functional within its own terms. The major categories of military offence are clearly identified, the most serious forms of misconduct attract appropriately serious penalties, and the framework as a whole serves the primary institutional goal of maintaining the discipline necessary for effective military operations. This is not a trivial achievement, and it should not be undervalued in the pursuit of reform.

The second truth is that the existing framework is significantly incomplete and in important respects inadequate to the legal, ethical, and operational requirements of the twenty-first century. The absence of specific provisions addressing digital misconduct, sexual harassment and assault,

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environmental offences, autonomous weapons, and the specific requirements of international humanitarian law leaves significant gaps that the existing categories can only partially fill. These gaps should be addressed through explicit legislative reform.

The third truth is that the philosophical foundations of the offence framework are contested in important respects, and that the contestation is not merely academic but has practical implications for how the law should be interpreted and applied. The questions of what justifies military punishment, how mens rea should be addressed in military offences, how the principle of legality constrains the general conduct provision, and how the demands of military discipline should be balanced against the rights of individuals are live and important questions that deserve sustained engagement from military legal practitioners and scholars.

The fourth truth is that the comparative and international perspective provides invaluable material for the development of Bangladesh Air Force law. The experience of the United States in reforming its military justice system, of Canada in applying constitutional rights standards to military proceedings, of the United Kingdom in developing independent oversight mechanisms, of Pakistan in the controversy surrounding the use of military courts against civilians, and of South Korea in the constitutional confrontation over martial law: all of these experiences offer lessons that can be adapted and applied to the Bangladesh context.

32.2 The Interrelation Between Offence Provisions and the Wider Legal System

One of the most important insights that emerges from the analysis in this Part is that the offence provisions of the Air Force Act do not exist in isolation from the wider legal system. They operate within the constitutional framework that Part One examined, they interact with the procedural framework that will be examined in Part Three, they connect with the rules of evidence that will be addressed in Part Four, and they reflect the complex interplay between domestic military law and international law that runs throughout this handbook.

The offence framework must be understood as part of a larger whole, a system of legal norms, institutional practices, cultural expectations, and constitutional values that together constitute Bangladesh Air Force law as a living legal tradition. The analysis of individual offence provisions is valuable and necessary, but it must always be conducted with awareness of the wider context in which those provisions operate and the wider purposes that the overall system is meant to serve.

The practical implication of this insight for legal practitioners within the Bangladesh Air Force is that effective legal work requires not just technical command of the offence provisions but the broader jurisprudential, constitutional, and comparative understanding that Part One and Part Two together are designed to provide. The officer or legal adviser who approaches a specific case with only the text of the relevant offence provision in mind is not fully equipped for the task. The officer or legal adviser who brings to bear the full range of philosophical, historical, constitutional, and comparative insights that this handbook aims to develop is in a position to serve the institution and its personnel with the quality of professional judgment that the gravity of military legal proceedings demands.

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32.3 Looking Ahead to Part Three: Courts Martial and Summary Proceedings

Part Three of this handbook will descend from the analysis of substantive offences to the examination of the procedural framework within which those offences are tried and adjudicated. The structure and composition of courts martial, the distinction between general, district, and summary courts martial, the powers of convening authorities, the procedures for bringing charges and conducting trials, the rules of evidence, and the mechanisms for appeal and review: all of these will be examined in the depth that their practical importance and jurisprudential interest deserve.

The procedural framework of military justice is not mere mechanics. It is the institutional expression of the values of fairness, accuracy, and accountability that the rule of law requires. A substantive offence framework that is well designed but administered through unfair procedures is not a just system: it is a system that can convict the innocent, acquit the guilty, and impose disproportionate penalties, regardless of how well its substantive provisions are drafted. The procedural framework matters as much as the substantive framework, and in some respects it matters more, since it is through procedure that the abstract commitments of the law are either realised or betrayed in the lives of actual people.

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End of Part Two

Editorial Note: Part Three of this handbook will proceed to a detailed examination of the procedural framework of courts martial and summary proceedings under the Bangladesh Air Force Act, addressing the composition and jurisdiction of different types of military courts, the powers of convening authorities and superior authorities, the conduct of trials, the rules of evidence, the making of findings and sentences, and the mechanisms for confirmation, review, and appeal. It will apply the philosophical and jurisprudential insights developed in Parts One and Two to the procedural architecture of military justice, examining how the procedural rules of the Air Force Act do or do not serve the values of fairness, accuracy, and institutional integrity that a legitimate military justice system must embody.

The author dedicates Part Two to the legal officers and judge advocates of the Bangladesh Air Force, whose daily work of translating abstract legal principles into the concrete circumstances of institutional justice is essential to the rule of law within the service and deserving of greater recognition and support than it has always received.

This handbook is intended as an educational and scholarly resource. It does not constitute legal advice. Officers seeking guidance on specific legal questions arising in the course of their duties should consult the legally qualified advisers of the Bangladesh Air Force.

PART THREE

COURTS MARTIAL AND SUMMARY PROCEEDINGS: STRUCTURE, COMPOSITION, PROCEDURE, JURISPRUDENCE, AND THE PURSUIT OF MILITARY JUSTICE

PREFATORY NOTE TO PART THREE

Parts One and Two of this handbook established the theoretical foundations and substantive offence framework of Bangladesh Air Force law. Part One examined the philosophical roots, historical origins, and constitutional architecture of the discipline. Part Two conducted a detailed jurisprudential analysis of the offence provisions of the Air Force Act of 1953, exploring each major category of prohibited conduct with philosophical depth, comparative awareness, and critical engagement. Together, those two parts equip the reader with the intellectual architecture necessary to understand not merely what the law provides but why it provides it and whether its

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provisions are adequate to the demands of justice, constitutional principle, and modern institutional reality.

Part Three now descends from the substantive to the procedural. Its concern is the framework within which military justice is administered: the courts martial and summary proceedings that constitute the adjudicative machinery of Bangladesh Air Force law. This shift from substance to procedure is not a descent into mere technicality. Procedure is, in a profound sense, where the promises of substantive law are either kept or broken. The most carefully drafted offence provision is worth nothing to a person wrongly accused if the procedural framework within which she is tried fails to give her a fair hearing, a genuinely independent adjudicator, adequate legal representation, and meaningful access to review and appeal. Conversely, the most robust procedural framework cannot deliver justice if the substantive law it applies is unjust, vague, or constitutionally infirm.

The procedural framework of Bangladesh Air Force law, examined in this Part, is the machinery through which the institution makes its most consequential decisions about the lives of its members. When an officer is tried by a general court martial for a serious offence and, if convicted, faces cashiering, imprisonment, or worse, the procedural framework determines whether that outcome is the product of genuine justice or of institutional convenience, command preference, or systematic unfairness. The stakes are correspondingly high, and the quality of engagement with the procedural framework that this Part demands is correspondingly serious.

This Part draws extensively on recent international developments in military justice procedure, including the landmark Canadian Supreme Court decision in R v Edwards of April 2024 on military judicial independence, the 2024 amendments to the United States Manual for Courts-Martial implementing the sentencing reforms of the Military Justice Act of 2016, the evolving jurisprudence on unlawful command influence in American and Canadian military courts, the controversy over the treatment of Bangladesh military officers before the International Crimes Tribunal as it emerged in 2025, and the comparative experience of India's Armed Forces Tribunal model. Together, these developments illuminate both the aspirations and the persistent failures of military justice systems in constitutional democracies, and they provide the comparative material against which Bangladesh Air Force law's own procedural framework must be assessed.

CHAPTER THIRTY-THREE: THE NATURE AND ARCHITECTURE OF MILITARY COURTS: FOUNDATIONAL CONCEPTS AND THEORETICAL FRAMEWORKS

33.1 What Is a Court Martial? Definitional and Constitutional Analysis

The court martial is the central adjudicative institution of the military justice system. In its most formal definition, a court martial is a tribunal constituted under military law to try persons subject to military law for offences under that law and to impose such punishments as the law authorises upon persons found guilty of those offences. This definition, while accurate as far as it

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goes, conceals a range of theoretical questions about the nature of military courts that deserve careful examination before the specific provisions of the Air Force Act are analysed in detail.

The first and most fundamental of these questions is whether a court martial is a court in the sense that the term is ordinarily used in constitutional jurisprudence. This question matters because the constitutional requirements that apply to courts, including the requirements of judicial independence and impartiality, the right of parties to a fair hearing, and the applicability of constitutional rights in proceedings, depend in part on whether the institution qualifies as a court. In many constitutional systems, including Bangladesh's, the concept of a court connotes a body that exercises judicial power, is independent of the executive, and provides procedural protections consistent with the rule of law. Whether courts martial satisfy these constitutional requirements is one of the most actively contested questions in contemporary military law scholarship.

The traditional answer, embedded in the common law tradition that Bangladesh Air Force law inherits, is that courts martial are not courts in the full constitutional sense but are instead tribunals exercising a specialised disciplinary jurisdiction that is derived from the prerogative of the executive rather than from the judicial power of the state. On this view, courts martial are instrumentalities of command, mechanisms through which the executive authority of the military hierarchy is exercised over those subject to military law, rather than genuinely independent judicial institutions. This traditional characterisation has been used to justify departures from the procedural standards that apply to civilian courts, including the involvement of the convening authority in the constitution of the court and the confirmation of its verdicts.

The contemporary jurisprudential challenge to this traditional characterisation is powerful and increasingly well-supported by both comparative law and constitutional analysis. If a court martial has the power to deprive a person of her liberty, to impose substantial punishment including imprisonment and cashiering, and to make findings that carry the stigma and consequences of a criminal conviction, then it is exercising judicial power in every meaningful sense of the term. The fact that it does so within an institutional framework that differs in structure from civilian courts does not change the nature of the power being exercised. And if it is exercising judicial power, then the constitutional requirements of judicial independence, impartiality, and fair procedure that apply to all exercises of judicial power should apply to it as well.

The Canadian Supreme Court's landmark decision in R v Edwards in April 2024 has provided the most authoritative recent judicial engagement with this question. The Court held, as noted in previous parts of this handbook, that persons tried by court martial are entitled to the same Charter guarantee of judicial independence and impartiality as those tried in civilian courts, while recognising that the different purposes and context of the military justice system may justify some departures from the specific institutional arrangements of civilian courts in achieving the same essential standard of judicial independence. This decision is constitutionally and jurisprudentially important not just for Canada but as a statement of principle that reflects the direction in which constitutional democracies are moving in their understanding of military courts.

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For Bangladesh, the constitutional analysis of courts martial must proceed from the framework established by the Constitution of the People's Republic of Bangladesh. The Constitution in its preamble commits Bangladesh to the rule of law, in its fundamental rights provisions guarantees rights to equality and fair procedure, and in its provisions on the judiciary establishes the principle of an independent judiciary as a cornerstone of the constitutional order. Whether courts martial as currently constituted under the Air Force Act are consistent with these constitutional commitments is a question that the Bangladesh judiciary has not yet definitively addressed but that the analysis in this Part prepares the reader to engage with.

33.2 The Three Types of Courts Martial Under the Air Force Act

The Air Force Act of 1953 establishes three types of courts martial, which differ in their composition, jurisdiction, powers, and procedural requirements. These three types are the general court martial, the district court martial, and the summary court martial. Understanding the distinctions between these three types, their respective roles in the military justice system, and the considerations that determine which type of proceeding is appropriate for a given case, is foundational to any practical engagement with the procedural framework of Bangladesh Air Force law.

The distinction between the three types of court martial reflects a graduated approach to military justice that balances the need for efficiency in dealing with minor misconduct against the need for full procedural protection in serious cases. The logic of the graduated system is that not every instance of military misconduct warrants the full apparatus of a general court martial, with its elaborate procedural requirements, its potential for lengthy proceedings, and its capacity to impose the most severe punishments. Minor misconduct should be dealt with expeditiously and proportionately, reserving the full procedural machinery for cases where the stakes, for both the institution and the accused, are sufficiently high to justify it.

This logic is sound in principle, though its application in practice is complicated by the risk that the graduated system may be used to deal with relatively serious cases in expedited proceedings that provide fewer protections for the accused than the full court martial process would offer. The temptation to save time and resources by using a less formal process for cases that would properly require a more formal one is a systemic risk in any graduated justice system, and the military context, with its institutional pressures and hierarchical dynamics, makes this risk particularly acute.

33.3 The Philosophy of Military Adjudication: Between Command and Justice

At the heart of the architecture of military courts lies a fundamental tension that has never been fully resolved in military jurisprudence: the tension between the institutional need for command authority over the military justice process and the requirements of justice that demand genuinely independent adjudication. This tension has been described by various military law scholars as the essential paradox of military justice, and understanding it is essential to understanding why the specific provisions of the Air Force Act's courts martial framework are structured as they are.

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The case for command authority over military justice rests on the familiar arguments from military necessity and institutional coherence. The commander who is responsible for the operational effectiveness of a unit has a legitimate interest in the discipline of that unit, and discipline that is administered without reference to the commander's operational requirements and institutional judgments would fail to serve the disciplinary functions that military justice exists to perform. A military justice system that is entirely independent of command authority might produce outcomes that are individually just but institutionally dysfunctional, acquitting persons whose presence in the unit would compromise its effectiveness or imposing punishments that fail to serve the disciplinary purposes that the particular case requires.

The case against command authority over military justice is equally powerful and is increasingly supported by both constitutional analysis and empirical research on the actual outcomes of command-controlled military justice. The essential claim of justice is that those who adjudicate disputes must be independent of the parties to those disputes and of persons with a personal or institutional interest in the outcome. A commander who convenes a court martial, selects its members, determines which charges are referred to it, and then confirms or modifies its findings and sentence, is performing functions that in a civilian context would be distributed among independent prosecutors, independent judges, and independent appellate bodies. The concentration of these functions in a single command authority creates structural incentives for unfairness that no amount of good faith can entirely eliminate.

The contemporary international trend in military justice reform, illustrated with particular clarity by the US Military Justice Act of 2016, the Canadian reforms following the Arbour Review, and the recommendations of military law scholars across multiple jurisdictions, is toward the progressive separation of command authority from adjudicative authority in the military justice system. The creation of the Office of Special Trial Counsel in the United States, removing prosecutorial discretion from commanders in cases involving the most serious offences, represents a significant step in this direction. So does the development in Canada of a framework for determining which cases should be handled by the military justice system and which should proceed through the civilian system, a framework that began operating fully in 2024.

For Bangladesh, this international trend has direct implications for the reform of the Air Force Act's courts martial framework. The concentration of authority in the convening officer, the commanding officer's role in selecting court members, and the post-trial confirmation process that keeps the commanding officer at the centre of the military justice cycle are all features of the current framework that are increasingly difficult to defend against the challenge that they fail to meet the constitutional and international human rights standards that a legitimate military justice system must satisfy.

33.4 Jurisdiction of Courts Martial: Personal, Subject Matter, and Territorial

Before examining the specific types of court martial in detail, it is necessary to address the foundational question of jurisdiction: the authority of a military court to try a particular person for a particular offence committed in particular circumstances. Military court jurisdiction has three dimensions, each of which must be satisfied before a court martial may validly proceed: personal jurisdiction, subject matter jurisdiction, and territorial jurisdiction.

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Personal jurisdiction refers to the authority of a court martial to try the particular person before it. Under the Air Force Act, personal jurisdiction extends to all persons subject to the Act, as defined in Section 2 of the Act. This includes officers, warrant officers, airmen, and persons attached to or in the custody of the Air Force. Personal jurisdiction generally attaches when a person enters into the service relationship defined by the Act and continues until she is discharged, retired, dismissed, or otherwise separated from that relationship in accordance with the Act.

The question of when personal jurisdiction terminates is one of considerable practical importance. The Air Force Act generally provides that jurisdiction continues until the person is duly discharged from service in accordance with the Act. This means that a person who has committed an offence while in service does not escape jurisdiction merely by separating from the service before trial, provided the separation was not in accordance with the Act. But the precise boundaries of post-service jurisdiction, and the circumstances in which a court martial may try a person for offences committed before a technically valid separation from service, are matters that require careful analysis.

Subject matter jurisdiction refers to the authority of a court martial to try the particular category of offence before it. The Air Force Act confers subject matter jurisdiction on courts martial over all offences defined in the Act, and also over civil offences committed by persons subject to the Act, as discussed in Part Two. The subject matter jurisdiction of different types of court martial differs in important respects: the general court martial has unlimited subject matter jurisdiction, while the district court martial and the summary court martial have more limited jurisdiction that excludes the most serious offences.

Territorial jurisdiction refers to the authority of a court martial to exercise its powers over conduct that occurred in particular places. Military courts have traditionally claimed jurisdiction over offences committed anywhere in the world by persons subject to military law, reflecting the operational reality that military service may require personnel to be deployed globally and that the discipline of the service must follow personnel wherever they serve. This claim to universal territorial jurisdiction is a distinctive feature of military law that has important implications for the relationship between military jurisdiction and the criminal law of the states in which military personnel are deployed.

CHAPTER THIRTY-FOUR: THE GENERAL COURT MARTIAL: CONSTITUTION, POWERS, COMPOSITION, AND PROCEDURE

34.1 The General Court Martial: Purpose and Powers

The general court martial is the highest and most powerful court martial under the Air Force Act. It has unlimited jurisdiction over all persons subject to the Act and over all offences under the Act, and it is the only court martial that may impose the most severe punishments available under the Act, including the death penalty, imprisonment for life or for any specified term, cashiering, and the other punishments at the upper end of the scale established by the Act.

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The general court martial is convened for cases involving the most serious offences, cases where the evidence or the legal issues are complex, cases involving senior officers for whom a lower level of court martial would be inappropriate, and any case where the maximum punishment available to lower courts martial is inadequate for the gravity of the alleged offence. The decision to convene a general court martial rather than a lower court martial, and the decision about which officer has the authority to convene a general court martial, are matters governed by the provisions of the Air Force Act and the regulations made thereunder, and they involve the exercise of significant discretionary authority by the relevant convening authority.

The convening authority for a general court martial is the President, acting through the appropriate military channel, or such other authority as the President may by order designate. This is one of the features of the general court martial that most clearly reflects its origins in the colonial British military system, in which the highest level of court martial required authorisation at the highest levels of the institutional hierarchy. The involvement of the highest authority in the convening of the most serious military courts reflects the institutional understanding that proceedings with potentially capital consequences for the accused are matters of the gravest institutional and political importance.

34.2 Composition of the General Court Martial

The composition of the general court martial under the Air Force Act reflects the dual nature of military adjudication as a combination of professional military judgment and legal expertise. The general court martial consists of a presiding officer, who must be an officer holding a rank no lower than that of group captain or equivalent, and not fewer than four other members, all of whom must be officers. The presiding officer and the court members are appointed by the convening authority or by an officer authorised by the convening authority to make such appointments.

The requirement that court members be officers, and that the presiding officer hold a specified minimum rank, reflects the traditional military law assumption that judgment of military conduct is most appropriately exercised by those who are themselves experienced in military service at a senior level. The experienced senior officer is expected to bring to the adjudicative task an understanding of military operations, military culture, and the institutional standards against which the accused's conduct is to be assessed that a legally trained civilian judge might lack.

But this assumption, however intuitive from within the military institutional perspective, is in significant tension with the requirements of independence and impartiality that a fair trial demands. The officers who serve as members of a general court martial are members of the same institutional hierarchy as the accused, subject to the same command authority, dependent for their own careers on the goodwill and assessments of those in command. The possibility that their judgments as members of a court martial will be influenced by institutional pressures, by loyalty to their command, by career concerns, or by the informal communication of command preferences about outcomes, is not merely hypothetical. It is a risk that the structure of the general court martial creates and that the procedural framework must actively work to mitigate.

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The appointment of court members by the convening authority is among the most structurally problematic features of the general court martial. The convening authority, as will be discussed in detail later in this Part, is the same authority that has decided to refer the case to trial, that has prepared the charge sheet, and that has a powerful institutional interest in the outcome of the proceedings. Allowing this authority to select the personnel who will adjudicate the case creates an obvious risk of structural bias, regardless of the good faith of the individual appointments. This risk is precisely what the American doctrine of unlawful command influence, discussed in detail in Chapter Thirty-Nine, is designed to address, and it is a risk that Bangladesh Air Force law must take equally seriously.

34.3 The Role of the Judge Advocate at General Courts Martial

One of the most important features of the general court martial under the Air Force Act is the provision for a judge advocate, a legally qualified officer who advises the court on questions of law. The judge advocate is not a member of the court and does not participate in the deliberations on findings or sentence. Her role is to provide independent legal advice to the court, to ensure that the proceedings are conducted in accordance with the law, and to advise the court on any legal questions that arise in the course of the trial.

The judge advocate's role is one of the principal mechanisms through which the rule of law is maintained in military proceedings, and the quality of that role is one of the most important determinants of the overall fairness of the general court martial. A judge advocate who is genuinely independent, legally well-qualified, intellectually confident, and willing to give advice that may be inconvenient or unwelcome to the command hierarchy performs an essential service to the rule of law. A judge advocate who is dependent on the command hierarchy for her own career prospects, who is reluctant to give advice that challenges institutional preferences, or who lacks the legal knowledge and confidence to engage with complex issues performs a role that is formal rather than substantive, and that may provide the appearance of legal oversight without its reality.

The independence of the judge advocate from the command hierarchy is therefore a matter of critical institutional importance. The judge advocate must be able to advise the court that a proposed course of action is unlawful, that evidence is inadmissible, that a charge is defective, or that the rights of the accused have been violated, without fearing institutional consequences for doing so. This requires structural protections for the independence of the judge advocate, including protection from adverse career consequences for giving independent advice, that the current Air Force Act framework does not fully provide.

The emerging international standard, reflected in the Canadian Judge Advocate General's Annual Report for 2024-2025, is that military legal officers exercising adjudicative or advisory functions must enjoy structural independence from the chain of command comparable to that enjoyed by civilian judges. This standard, which the Canadian Supreme Court affirmed in R v Edwards in the specific context of military judges, is equally relevant to the broader category of military legal officers performing adjudicative functions, including judge advocates advising courts martial.

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34.4 The Pre-Trial Stage of General Court Martial Proceedings

The pre-trial stage of general court martial proceedings involves a sequence of steps that begins with the report or complaint of an alleged offence and culminates in the referral of charges to trial. This sequence includes the initial investigation of the alleged offence, the preparation of a charge sheet, the preferral of charges by the commanding officer, the conduct of a summary of evidence or inquiry, and the referral of the case to the general court martial by the convening authority. Each of these steps involves the exercise of discretionary authority and each creates the possibility of procedural error or injustice that the subsequent stages of the proceedings must either cure or compound.

The initial investigation of an alleged offence is governed by the provisions of the Air Force Act and the regulations made thereunder. The commanding officer of the accused person is responsible for initiating the investigation and for ensuring that it is conducted fairly and thoroughly. The quality of this initial investigation is critical: evidence that is not properly preserved at this stage may be lost, witnesses whose recollections are most accurate at the time of the alleged offence become less reliable as time passes, and the fairness of the subsequent proceedings depends in significant part on the quality of the initial evidential foundation.

The right of the accused to be informed of the allegations against her at the earliest practicable stage of the proceedings is a fundamental principle of fair procedure that the Air Force Act does not always make sufficiently explicit. International human rights standards, including the International Covenant on Civil and Political Rights and its General Comment No. 32, require that persons under criminal investigation be informed promptly of the nature and cause of the charges against them. This requirement applies with equal force in the military context, and any failure to provide timely and adequate information about the allegations is a potential ground for challenge to the fairness of subsequent proceedings.

34.5 The Charge Sheet: Form, Content, and Legal Requirements

The charge sheet is the foundational document of a court martial proceeding. It defines the offences with which the accused is charged, specifies the particulars of the alleged conduct, and provides the framework within which the evidence is to be presented and assessed. The legal requirements for the form and content of charge sheets under the Air Force Act are matters of considerable practical importance, since defects in the charge sheet may provide grounds for challenging the jurisdiction of the court or the fairness of the proceedings.

A charge sheet must identify the accused with sufficient precision to avoid any doubt about who is being tried, must specify each offence charged with reference to the provision of the Air Force Act under which it is brought, and must set out the particulars of the alleged conduct in terms sufficient to give the accused notice of the case she has to meet. The requirement of adequate particulars is an expression of the principle of legality, discussed in Part Two: the accused is entitled to know in advance the specific conduct that is alleged against her, so that she can prepare her defence effectively.

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The common law tradition from which Bangladesh Air Force law inherits contains a substantial body of jurisprudence on the requirements of criminal charges, including the rules against duplicity, which prohibit charging more than one offence in a single count, and the rules requiring the particulars of the charge to be consistent with the offence provision under which the charge is brought. These requirements, developed in the civilian criminal law context, apply with equal force in the military law context and provide an important check on the power of the prosecution to frame charges in ways that are prejudicial to the accused.

The amendment of charges during the course of proceedings is a matter regulated by the Air Force Act and raises important questions about the rights of the accused. The accused is entitled to know from the outset of the proceedings the charges she faces, and the late addition or amendment of charges may prejudice her preparation of her defence in ways that cannot be remedied by any provision of additional time. The principles governing the amendment of charges must balance the prosecution's legitimate interest in bringing all relevant charges against the accused's right to fair notice and adequate preparation.

CHAPTER THIRTY-FIVE: DISTRICT COURTS MARTIAL: INTERMEDIATE JURISDICTION AND ITS CHALLENGES

35.1 The District Court Martial: Powers and Limitations

The district court martial occupies an intermediate position in the hierarchy of courts martial under the Air Force Act. It has jurisdiction over a range of offences that falls between the full jurisdiction of the general court martial and the limited jurisdiction of the summary court martial, and it may impose punishments up to, but not including, the most severe punishments available to the general court martial. The district court martial cannot impose the death penalty or imprisonment for terms exceeding two years on an officer, or cashiering for a warrant officer.

The district court martial is intended to serve as the primary forum for cases of intermediate seriousness: offences that are too serious to be dealt with summarily by the commanding officer but not so serious as to require the full apparatus of a general court martial. This intermediate function serves an important institutional purpose, but its effectiveness depends on the quality of the procedural protections it provides and on the consistency with which the appropriate level of court martial is selected for each case.

The composition of the district court martial differs from the general court martial principally in the seniority of the presiding officer required and the minimum number of members specified. The lesser seniority requirements for the district court martial reflect the assumption that cases tried at this level are of lesser complexity or gravity than those tried by general court martial, but this assumption is not always accurate, and the procedural protections available at district courts martial should be no less rigorous than those at general courts martial.

35.2 The Problem of Inappropriate Referral: Downgrading Serious Cases

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One of the most significant systemic risks in a graduated courts martial system is the risk that cases of genuine seriousness are referred to lower courts martial than their gravity warrants, either to save time and resources or to achieve outcomes that would be more difficult to secure in the more protective environment of the higher court. The literature on military justice systems across multiple jurisdictions documents this risk with some regularity, and it represents a form of structural injustice that affects both the accused, who may be deprived of procedural protections to which she is entitled, and the institution, whose credibility is undermined when serious cases are not dealt with with the seriousness they deserve.

The risk of inappropriate downward referral is a dimension of the broader problem of command control over the military justice process. A commanding officer who has the discretion to refer a case to a district court martial rather than a general court martial has an incentive to do so when she believes that the district court martial is more likely to produce the outcome she desires: perhaps a conviction without the scrutiny that a general court martial's more elaborate procedures would provide, or perhaps a lower sentence than the general court martial could impose. The structural protections against this abuse of discretion are less robust than they should be in the current framework of Bangladesh Air Force law.

The development of clearer criteria for the referral of cases to different levels of court martial, and the provision of an independent mechanism for reviewing referral decisions that are challenged by the accused as inappropriate, are important reform priorities. Such criteria and mechanisms would limit the scope for the misuse of the graduated system while preserving the efficiency benefits that gradation provides.

CHAPTER THIRTY-SIX: SUMMARY COURTS MARTIAL: EXPEDITED JUSTICE AND ITS JURISPRUDENTIAL PROBLEMS

36.1 The Summary Court Martial: Speed, Efficiency, and the Risk of Unfairness

The summary court martial is the most informal and the most expeditious of the three types of court martial. It is intended for cases involving relatively minor offences where the interests of institutional discipline require a swift response that the elaborate procedures of a general or district court martial would preclude. The summary court martial is constituted by a single officer, the commanding officer or an officer designated by the commanding officer, who performs all the functions of judge and jury, conducting the hearing, assessing the evidence, making the finding of guilt or innocence, and imposing the punishment.

The concentration of all adjudicative functions in a single officer who is also the commanding officer of the accused, or who is designated by the commanding officer, creates obvious risks for the fairness of summary proceedings. The commanding officer has a direct institutional interest in the outcome of proceedings before her: she has typically already decided that the accused has committed an offence (since she would not have initiated proceedings if she did not believe this), she is responsible for the discipline and reputation of the unit, and she may have personal or professional relationships with both the accused and the witnesses that bear on the case. These

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conflicts of interest are structural, not merely personal, and they cannot be eliminated by requiring individual commanding officers to act with good faith and impartiality.

The rights of the accused in summary proceedings are more limited than in formal courts martial. The right to legal representation, for example, is not always clearly established in summary proceedings under the Air Force Act, and the accused may not have access to counsel in preparing her response to the charges. The right to call witnesses and to cross-examine prosecution witnesses is also more limited in summary proceedings than in formal courts martial. These limitations are justified, within the traditional framework of military justice thinking, by the minor character of the offences dealt with in summary proceedings and by the need for expeditious resolution of discipline issues. But they are increasingly difficult to defend against the challenge that even minor disciplinary proceedings must meet minimum standards of fairness if they are to be consistent with constitutional and international human rights requirements.

36.2 The Accused's Right to Elect Court Martial

One of the most important protections available to an accused in summary proceedings is the right to elect trial by a formal court martial rather than by the summary procedure. This right, which exists in various forms in different military justice systems, reflects the recognition that the summary procedure is a less protective forum than the formal court martial and that an accused should not be compelled to submit to it against her will, particularly where the charges are serious enough to carry significant punishments.

The right of election is, however, subject to important qualifications. The accused who elects formal court martial in preference to summary proceedings takes a significant risk: the formal court martial may impose heavier punishments than the summary procedure could, and the accused who elects to contest charges that might have been dealt with leniently by the commanding officer in summary proceedings may find herself facing much more severe consequences if convicted by a general court martial. This asymmetry creates a practical pressure against election that may effectively compel accused persons to submit to summary proceedings even where they have genuine grounds for contesting the charges or the procedure.

The design of the election mechanism should take seriously this asymmetry and should ensure that the accused's decision to elect is genuinely voluntary and genuinely informed. An accused who is not given adequate information about the differences between summary and formal proceedings, about the potential punishments available at each level, and about the risks and benefits of election is not in a position to make a meaningful choice. The quality of legal advice available to accused persons at the point of election is accordingly of great importance, and the absence of a robust right to legal advice at this stage is a significant deficiency in the current framework.

36.3 Nonjudicial Punishment as an Alternative to Courts Martial

In addition to the three formal types of court martial, the Air Force Act provides for the administration of disciplinary sanctions by commanding officers outside the formal court martial process. These nonjudicial or non-judicial punishments, which correspond to what American

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military law calls Article 15 punishment, allow commanding officers to impose specified minor punishments for minor offences without resort to any form of court martial.

Nonjudicial punishment serves important institutional functions. It provides a rapid and relatively informal mechanism for dealing with the most frequent and least serious forms of military misconduct, freeing the court martial system from the burden of dealing with cases that are insufficiently serious to warrant formal proceedings. It maintains the commanding officer's authority as the primary disciplinary agent within the unit, preserving the intimate connection between leadership and discipline that the military tradition regards as essential. And it avoids the formal record of a court martial conviction, which carries significant professional and personal consequences for the accused even when the conduct involved is genuinely minor.

But nonjudicial punishment also carries risks that must be managed carefully. The commanding officer who administers nonjudicial punishment acts simultaneously as investigator, prosecutor, judge, and sentencing authority, with no external check on the exercise of her discretion. The accused who accepts nonjudicial punishment may do so not because she admits guilt but because the alternative, electing trial by court martial with its greater risks and delays, is too costly. And the informal procedures of nonjudicial punishment provide little protection against bias, prejudice, or abuse of authority on the part of the commanding officer.

The right of the accused to reject nonjudicial punishment and demand formal court martial is an important safeguard against these risks, but it operates imperfectly in practice for the reasons discussed above. The development of additional safeguards, including a right to be accompanied by a legal adviser during nonjudicial punishment proceedings, a right to appeal against the findings or punishment to an independent authority, and a requirement that commanding officers document their reasoning in nonjudicial punishment cases, would significantly strengthen the protections available to accused persons in this context.

CHAPTER THIRTY-SEVEN: THE CONVENING AUTHORITY: POWERS, RESPONSIBILITIES, AND THE PROBLEM OF STRUCTURAL CONFLICT

37.1 The Role and Powers of the Convening Authority

The convening authority is the officer who exercises the primary power of initiation in the military justice system. It is the convening authority who decides that a case warrants formal proceedings, who convenes the court martial by issuing the convening order, who selects the officers who will constitute the court, and who subsequently reviews the findings and sentence of the court and decides whether to confirm, modify, or remit them. The convening authority is, in the traditional framework of military justice, the commanding general of the disciplinary process, and her role pervades every stage from initiation to final disposition.

The power of the convening authority is extensive and the checks on it are limited. The convening authority's decision to refer a case to trial is not subject to pre-trial review by any independent body, so that the decision to prosecute cannot be challenged in advance of the trial

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itself. The convening authority's selection of court members is subject to the general requirement that they be persons best qualified to serve, but the practical scope for challenging member selections on this basis is limited. And the convening authority's post-trial power to modify or remit findings and sentences, while ostensibly a power of mercy, is also a power to override the considered judgment of the court itself.

This concentration of power in the convening authority has been, from the earliest days of military justice reform debates, the primary target of criticism. The fundamental objection is that the same authority that decides to prosecute should not also decide who adjudicates the prosecution and what happens to the outcome of the adjudication. These functions, which in civilian justice are separated among independent prosecutors, independent judges, and independent appellate bodies, are in the military system concentrated in a single institutional officer whose role is simultaneously that of prosecutor, court-constituting authority, and post-trial reviewing authority.

37.2 The Convening Authority and the Referral Decision

The referral decision, the convening authority's determination that charges should be referred to trial rather than disposed of by administrative action, nonjudicial punishment, or dismissal, is the most consequential decision in the military justice process. It is the decision that determines whether a person will face the full apparatus of a court martial with all its potential consequences for her liberty, career, and reputation. The standard that governs this decision, and the procedural protections that apply to the accused at the referral stage, are accordingly matters of great importance.

The Air Force Act does not specify a detailed standard for the referral decision beyond the general requirement that there be sufficient evidence to justify a trial. In practice, the convening authority consults with her staff legal officer, the equivalent of the judge advocate in the advisory capacity, before making the referral decision, and the legal officer's advice should include an assessment of whether the evidence is sufficient to sustain a conviction beyond reasonable doubt. But this advisory function does not constitute an independent check on the referral decision, since the legal officer is part of the same institutional hierarchy as the convening authority and is subject to the same pressures and influences.

The development of a more rigorous standard for the referral decision, and the creation of an independent pre-trial review mechanism through which the sufficiency of the evidence and the appropriateness of the charges can be assessed before referral to trial, are reforms that would significantly improve the fairness and legitimacy of the military justice process. Such a mechanism, modelled in part on the Article 32 preliminary hearing under the American UCMJ as reformed by the Military Justice Act of 2016, would provide the accused with an opportunity to challenge the sufficiency of the prosecution's case before being subjected to the full burden and consequences of a court martial proceeding.

37.3 Post-Trial Powers of the Convening Authority: Confirmation and Clemency

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The convening authority's post-trial powers over the findings and sentence of a court martial represent one of the most distinctive and most controversial features of the traditional military justice system. After a court martial has reached its verdict and imposed its sentence, the proceedings are submitted to the convening authority for confirmation. The convening authority may confirm the findings and sentence, may reduce or remit the sentence, may disapprove any finding of guilty and direct an acquittal, or may order a new trial.

The power to disapprove findings of guilty and to reduce or remit sentences is, on its face, a power of mercy in favour of the convicted person, and it has been justified on the ground that the commanding officer who is responsible for the unit's discipline is best placed to assess whether the punishment imposed by the court is appropriate to the individual circumstances and the needs of the unit. But the power to override a court martial's judgment, even in the convicted person's favour, is a power that undermines the authority and independence of the court. If a court martial's verdict can be set aside by the commanding officer who convened the proceedings, the court is not in reality an independent adjudicative body but an advisory committee whose recommendations the convening authority may accept or reject.

The reform of the post-trial power of the convening authority has been a central concern of military justice reform in comparable jurisdictions. In the United States, the Military Justice Act of 2016 and the subsequent 2019 amendments significantly limited the convening authority's post-trial powers, removing the general power to disapprove findings of guilty for reasons not amounting to legal error and restricting the circumstances in which sentences may be modified. These reforms were motivated precisely by the recognition that the convening authority's broad post-trial powers were inconsistent with the genuine independence of military courts.

For Bangladesh Air Force law, the reform of the convening authority's post-trial powers is an important element of any comprehensive programme to bring the military justice system into closer alignment with constitutional and international human rights standards. The development of a clear distinction between legitimate post-trial powers of clemency or executive review, on the one hand, and the inappropriate override of judicial decisions on grounds of institutional convenience, on the other, is a critical element of this reform.

CHAPTER THIRTY-EIGHT: THE MILITARY JUDGE: INDEPENDENCE, APPOINTMENT, TENURE, AND THE DEMANDS OF IMPARTIALITY

38.1 The Military Judge as an Institutional Innovation

The figure of the military judge, a legally qualified officer who presides over courts martial as a professional adjudicator rather than as a commander exercising disciplinary authority, represents one of the most significant institutional innovations in twentieth-century military justice. In the traditional framework of courts martial, including the framework that the Air Force Act of 1953 reflects, the presiding officer of a court martial was simply the most senior officer among the court's members, whose legal qualifications were often limited and whose adjudicative role was supplemented by the advisory function of the judge advocate. The development of the dedicated

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military judge, a professionally qualified legal officer who exercises an independent judicial function comparable to that of a civilian judge, has been one of the most important reforms in the modernisation of military justice.

The Air Force Act, in its provisions on the conduct of general courts martial, reflects aspects of this evolution toward the professional military judge, though the framework is not as fully developed as in more recently reformed military justice systems. The provisions for a judge advocate to advise the court on questions of law, and the procedural requirements that govern the conduct of courts martial, reflect the recognition that legal expertise is essential to fair adjudication. But the development of a fully independent professional military judiciary, with the tenure protections, appointment processes, and structural independence from command authority that genuine judicial independence requires, has not yet been comprehensively achieved in Bangladesh Air Force law.

38.2 The Constitutional Standard of Judicial Independence and Its Application to Military Courts

The constitutional standard of judicial independence, which requires that judges be independent of the executive and immune from pressure or interference in the exercise of their judicial functions, is one of the most fundamental principles of the constitutional order. In Bangladesh, the independence of the judiciary is a matter of constitutional principle established by the Constitution and given institutional expression by the separation of the judiciary from the executive under the 12th Amendment.

The application of this constitutional standard to military judges is the central question addressed by the Canadian Supreme Court in R v Edwards in April 2024. The Court's analysis in that case, which affirmed that military judges must meet the same constitutional standard of independence as civilian judges while recognising that the institutional arrangements for achieving that standard in the military context may differ from those in the civilian context, provides the most authoritative recent judicial statement on this question.

The Court's analysis in Edwards identified several specific safeguards of military judicial independence that are relevant to the evaluation of Bangladesh Air Force law. These include security of tenure for military judges, which protects them from removal for reasons connected to their judicial decisions; independence in the determination of their pay and conditions, which insulates them from economic pressure from the executive; and institutional independence in the administration of their judicial functions, which ensures that they are not subject to direction or supervision by the command hierarchy in the exercise of their judicial role.

The Canadian Annual Report for the Judge Advocate General for 2024-2025 elaborated on the implications of Edwards, noting that following the Supreme Court's decision, military judges in Canada enjoy security of tenure, have a separate regime for grievances and protection against relief from performance of military duty, can only be removed for cause by the Governor in Council upon recommendation of the Military Judges Inquiry Committee, and have their pay set by an independent Military Judges Compensation Committee. These structural protections, which the Supreme Court found sufficient to satisfy the constitutional standard of judicial

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independence, provide a useful template for assessing the adequacy of the protections available to military legal officers performing adjudicative functions under Bangladesh Air Force law.

By these standards, the protections currently available under Bangladesh Air Force law are inadequate. The legal officers who perform adjudicative and advisory functions in courts martial are subject to the career management systems of the Air Force in the same way as operational officers, and there are no specific structural protections comparable to those identified in the Canadian framework that insulate them from career-related pressure arising from their judicial decisions. This is a significant deficiency that a comprehensive reform of Bangladesh Air Force law should address.

38.3 Appointment Processes for Military Judicial Officers

The process by which military legal officers who perform judicial functions are appointed has important implications for the independence and quality of military adjudication. The independence of the judicial appointment process, in the sense that appointments are made on the basis of legal qualification and judicial temperament rather than on the basis of institutional loyalty or command preference, is a precondition for the genuine independence of the military judiciary from the command hierarchy.

In civilian judicial systems, the importance of independent appointment processes is widely recognised, and various mechanisms have been developed to reduce the scope for political or executive interference in judicial appointments, including judicial appointment commissions, merit-based selection processes, and requirements for consultation with independent legal bodies. The development of comparable mechanisms for the appointment of military judges and legal officers in military justice roles has been identified as a reform priority in multiple comparative jurisdictions.

For Bangladesh Air Force law, the development of a more formalised and independent appointment process for military legal officers performing judicial roles would represent an important step toward genuine judicial independence. This process might involve the participation of the civil judiciary, senior legal practitioners, or an independent advisory committee in the assessment of candidates for military judicial roles, and it would specify the legal qualifications and experience required for appointment rather than leaving these matters to the discretion of the military hierarchy.

CHAPTER THIRTY-NINE: UNLAWFUL COMMAND INFLUENCE: THE PARAMOUNT VICE OF MILITARY JUSTICE AND ITS CONTEMPORARY MANIFESTATIONS

39.1 The Doctrine of Unlawful Command Influence: Origins and Rationale

Unlawful command influence, sometimes described as the paramount evil of the military justice system, is the inappropriate interference by persons in authority in the independence and

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impartiality of military justice proceedings. It encompasses a wide range of conduct, from explicit direction by a commanding officer to court members about the desired outcome of a case to more subtle forms of pressure that create an institutional climate in which those involved in military justice proceedings understand that certain outcomes are expected or preferred.

The doctrine of unlawful command influence is most fully developed in American military law, where it has been the subject of extensive litigation and jurisprudential development over the seven decades since the Uniform Code of Military Justice was enacted in 1950. The suppression of unlawful command influence was, as the Just Security article marking the 75th anniversary of the UCMJ in 2025 noted, a central goal of the legislation when it was enacted. Despite this express legislative intent, unlawful command influence has remained a persistent feature of the American military justice system and one of its most litigated issues.

The rationale for the doctrine is straightforward and compelling. Military justice, whatever its institutional differences from civilian justice, must deliver outcomes that are the product of independent and impartial assessment of the evidence and the law, not of institutional pressure or command preference. An accused who is convicted not because the evidence proved her guilt beyond reasonable doubt but because the commanding officer communicated her expectation of conviction has not received justice: she has received the appearance of justice while being subjected to the reality of command control. An acquittal secured through improper command pressure on court members is equally tainted, even if its effects on the individual accused are less immediately harmful.

The doctrine distinguishes between two forms of unlawful command influence. Actual unlawful command influence occurs when command influence directly impacts the decision-making process in military justice proceedings: there is demonstrable evidence that a commander made statements or took actions intended to influence proceedings and that this influence had the required effect. Apparent unlawful command influence exists when circumstances create the appearance of improper influence, regardless of whether actual influence occurred, because the appearance of fairness is itself an essential component of a legitimate justice system.

39.2 Manifestations of Unlawful Command Influence in Practice

The manifestations of unlawful command influence in practice are diverse and sometimes subtle. The most obvious form is the direct communication by a senior officer to court members or the judge advocate of the outcome expected in a specific case. But unlawful command influence more commonly operates through less direct means: through the communication of command attitudes toward certain categories of offence or certain accused persons, through the selection of court members whose views are known to align with the command's preferences, through the creation of a command climate in which conviction or acquittal in particular cases is understood to be institutionally expected, and through career management decisions that signal to military legal officers the institutional consequences of decisions that displease the command hierarchy.

The problem of selection bias in the appointment of court members has been identified as one of the most persistent and most difficult to address forms of structural unlawful command influence. When the convening authority has broad discretion in selecting the officers who will

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serve as court members, and when that discretion can be exercised in ways that favour the appointment of officers whose views or institutional loyalties are likely to produce the desired outcome, the independence of the court is compromised even if no individual communication of command preference occurs. The American jurisprudence on member selection, developed in cases such as United States v. Littrice, illustrates the ways in which the member selection process can be manipulated to produce structurally biased panels.

The reform of the member selection process is one of the most important structural interventions available to address the problem of unlawful command influence. Various approaches have been proposed and implemented in different military justice systems. Random selection of eligible officers, subject to challenges for specific cause, would eliminate the scope for the convening authority to stack the court with officers whose views are known to be favourable to the prosecution. The development of explicit criteria for disqualification of court members on grounds of bias, including institutional affiliations and career relationships with the parties or the convening authority, would provide the basis for principled challenges to potentially biased members.

The Lawfare article published in May 2025 on maintaining military justice in the face of presidential expansionism raised the specific concern about unlawful command influence being exercised not to obtain convictions, as has historically been the primary concern, but to obtain acquittals in cases where the command hierarchy is sympathetic to the accused or opposed to the prosecution. This bidirectional character of unlawful command influence risk illustrates the importance of designing structural protections that operate symmetrically, preventing improper influence whether it favours the prosecution or the defence.

39.3 Unlawful Command Influence in the Bangladesh Air Force Context

The specific features of the Bangladesh military context that are most relevant to the unlawful command influence analysis include the highly hierarchical nature of the institutional culture, the relatively limited development of military legal culture and professional military legal education, the potential for career management pressures to operate with particular force in a relatively small military institution where senior officers know each other personally, and the political sensitivities that may attach to military justice proceedings involving allegations of misconduct by senior officers.

The relationship between military justice and political authority in Bangladesh, examined in Part One in the context of the periods of military governance and the subsequent constitution of democratic civilian control, creates a background of political sensitivity that is directly relevant to the unlawful command influence analysis. Military justice proceedings that touch on the conduct of officers who are connected to the political establishment, or that involve allegations of misconduct arising from politically sensitive operations, create particular risks of improper influence that the procedural framework must be equipped to address.

The emerging controversy around the detention and prosecution of military officers before the International Crimes Tribunal, as discussed in the Daily Star in October 2025, illustrates the intersection of military law, civilian jurisdiction, and political context that creates distinctive

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challenges for the maintenance of genuine independence in military justice processes. The claim, advanced in some quarters, that military personnel are answerable only to court martial and not to civilian tribunals, and the counter-argument that the International Crimes Tribunal has jurisdiction over any person, including military personnel, for crimes against humanity, represent a live and contested jurisprudential debate that directly engages the question of the limits of military institutional autonomy.

39.4 Systemic and Institutional Reforms to Address Unlawful Command Influence

The most effective responses to unlawful command influence are structural rather than merely prohibitory. Prohibiting unlawful command influence without changing the structures that create incentives for it and opportunities to exercise it is unlikely to produce lasting improvement. The structural reforms most directly relevant to addressing unlawful command influence in Bangladesh Air Force law include the following.

First, the separation of prosecutorial authority from command authority, at least for the most serious offences, would remove the commanding officer from the decision about whether to prosecute and at what level, eliminating one of the most powerful levers of command influence over the justice process. The creation of an independent special trial counsel service, modelled on the American reform, would be a significant step in this direction.

Second, the reform of the court member selection process to introduce randomisation or independent selection criteria would eliminate the scope for the convening authority to select court members on the basis of their institutional loyalties or expected views. This reform would not eliminate all forms of unlawful command influence, but it would address the most direct and most powerful form.

Third, the development of robust career protections for military legal officers who give independent advice that is unwelcome to the command hierarchy would remove one of the most powerful structural incentives for self-censorship and institutional conformism in military legal practice. These protections should include explicit prohibitions on adverse career action connected to the exercise of independent legal judgment, independent review of career management decisions affecting military legal officers, and whistleblower protections for legal officers who report improper pressure.

Fourth, the development of a formal mechanism for reporting and investigating allegations of unlawful command influence, independent of the chain of command that is the source of the alleged influence, would provide a practical remedy for those who experience or witness improper pressure in military justice proceedings.

CHAPTER FORTY: THE TRIAL PROCESS: RIGHTS OF THE ACCUSED, EXAMINATION OF WITNESSES, AND THE CONDUCT OF PROCEEDINGS

40.1 The Rights of the Accused at Trial: Constitutional and International Standards

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The rights of an accused person in a court martial trial are the most direct expression of the justice system's commitment to fairness and the rule of law. These rights include the right to be presumed innocent until proven guilty, the right to know the charges against her and the evidence on which they are based, the right to legal representation, the right to a fair and public hearing, the right to confront and cross-examine prosecution witnesses, the right to call witnesses in her own defence, the right against self-incrimination, and the right to have the case decided by an independent and impartial tribunal applying the correct standard of proof.

These rights, which are guaranteed by the Constitution of Bangladesh and by the International Covenant on Civil and Political Rights to which Bangladesh is a party, apply in courts martial as well as in civilian courts. The practical question is not whether these rights apply in principle, but whether the procedural framework of the Air Force Act is adequate to give them practical effect in the specific circumstances of military proceedings.

The right to legal representation is of particular importance and particular concern in the Bangladesh context. The Air Force Act provides that an accused person at a general court martial may be defended by a legally qualified officer of the Air Force or may engage a civilian legal practitioner. But the quality of the legal representation actually available to most accused persons in practice is a matter of considerable uncertainty. Military legal officers assigned to defence cases may lack the experience, the training, or the structural independence to provide effective representation. Civilian legal practitioners who are not familiar with military law and military procedure may be unable to navigate the specific framework of the Air Force Act effectively. And accused persons who lack the resources to engage experienced civilian counsel may be dependent on whatever legal assistance the institution provides, the quality of which may not be adequate to the complexity of the case.

The standard of effective assistance of counsel that applies in civilian criminal proceedings, requiring that legal representation be not merely formal but genuinely effective in the sense of enabling the accused to mount a meaningful defence, should apply with equal force in military proceedings. The development of a professional defence legal service within the Air Force, with lawyers who are dedicated to the defence function, structurally independent of the prosecution and the command hierarchy, and properly trained in military law and procedure, is an important institutional reform that would significantly enhance the quality of legal representation available to accused persons.

40.2 The Presumption of Innocence and Its Application in Military Proceedings

The presumption of innocence, which requires that the prosecution bear the burden of proving the accused's guilt beyond reasonable doubt without any obligation on the accused to establish her innocence, is among the most fundamental principles of criminal justice and is constitutionally mandated in Bangladesh by the spirit of Articles 31 and 35 of the Constitution and by international human rights standards.

The application of the presumption of innocence in military proceedings faces distinctive challenges that arise from the character of the military institutional environment. The institutional culture of military service, with its emphasis on accountability, its presumption in

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favour of the authority of superior officers, and its tendency to regard the initiation of formal proceedings as evidence of wrongdoing, creates a social and cultural context in which the presumption of innocence may be difficult to maintain in practice. An accused who is placed in arrest pending trial, who is removed from her unit and its social networks, and who is subjected to the institutional stigma that attaches to being charged with a military offence, is already experiencing consequences that presuppose her guilt before any finding has been made.

The management of pre-trial publicity and institutional communication about pending cases is a matter that military justice systems must address carefully. Senior officers who publicly comment on the guilt of accused persons before their cases have been decided, whether through formal institutional communications or through the informal channels of command culture, commit a form of unlawful command influence that is also an attack on the presumption of innocence. The development of clear and enforced protocols governing institutional communication about pending military justice cases is an important procedural reform.

40.3 The Examination of Witnesses: Rights, Procedures, and Evidentiary Principles

The right to confront and cross-examine witnesses is one of the most fundamental protections of the accused in any criminal proceeding. It is the practical mechanism through which the accused can challenge the reliability, accuracy, and credibility of the evidence against her, expose inconsistencies and weaknesses in the prosecution case, and give the tribunal a complete picture of the relevant facts. The right of confrontation is constitutionally mandated, reflected in Article 35(3) of the Bangladesh Constitution which provides that every person accused of a criminal offence shall have the right to a speedy and public trial by an independent and impartial court.

The practical exercise of the right to cross-examination in military proceedings raises distinctive questions about the availability of witnesses, the treatment of witnesses who are themselves members of the armed forces and subject to institutional pressures, and the admissibility of evidence obtained in circumstances that may not have provided opportunities for testing.

The witness who is a military superior of the accused faces a particular form of institutional pressure in military proceedings. The obligation of truthfulness in giving evidence conflicts with the institutional loyalty and deference to authority that military culture instils, and the witness who gives evidence that is damaging to a senior colleague, unfavourable to the institutional narrative, or contradictory of the prosecution's case may face informal adverse consequences despite any formal protections that the proceedings are supposed to provide. The management of these pressures on military witnesses is one of the most difficult challenges in the administration of military justice and one that procedural rules alone cannot fully address.

The treatment of hearsay evidence in military proceedings is another area requiring careful attention. The general rule against hearsay, which excludes out-of-court statements offered to prove the truth of the matter asserted, is an important protection for the accused because hearsay evidence cannot be effectively challenged by cross-examination. Military proceedings sometimes apply a less strict approach to hearsay than civilian criminal proceedings, on the ground that the operational context of military service makes it practically difficult to produce all witnesses in person. This relaxed approach to hearsay should be subject to careful scrutiny to ensure that it

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does not compromise the fundamental fairness of military proceedings in ways that cannot be justified by operational necessity.

40.4 The Standard of Proof: Beyond Reasonable Doubt in the Military Context

The standard of proof in criminal proceedings, whether civilian or military, is proof beyond reasonable doubt. This standard, which requires that the tribunal be sure of the accused's guilt before returning a verdict of guilty, reflects the fundamental principle that it is better for guilty persons to go free than for innocent persons to be convicted. In the military context, the standard is no different from the civilian context, though the institutional pressures that may influence the assessment of evidence may create de facto departures from the standard that formal procedural rules cannot easily address.

The reasonable doubt standard should be explained clearly to court members before they deliberate on their verdict, and the explanation should make clear that the standard requires something more than a mere balance of probabilities: it requires a degree of certainty that excludes reasonable alternative explanations of the evidence. The failure to instruct court members adequately on the standard of proof is a ground of appeal in American military jurisprudence, and it should be equally available as a ground of challenge in Bangladesh Air Force proceedings.

The institutional dynamics of military proceedings, including the hierarchical composition of courts martial and the potential for senior members to influence the views of junior members in deliberation, create specific risks for the application of the reasonable doubt standard that do not arise to the same degree in civilian jury proceedings. The development of deliberation protocols that protect the independence of individual court members, including protections against pressure from senior members and requirements for individual rather than group deliberation on the evidence, would help to ensure that the reasonable doubt standard is genuinely applied in military proceedings.

CHAPTER FORTY-ONE: FINDINGS AND SENTENCES: THE ADJUDICATIVE DECISION AND ITS JUSTIFICATION

41.1 The Making of Findings: Deliberation, Voting, and Independence

After the evidence has been presented and the parties have made their closing submissions, the court martial proceeds to deliberation on its findings. This phase of the proceedings is conducted in private, with only the members of the court and, in some circumstances, the judge advocate or presiding officer participating. The deliberation process, and the voting procedure through which findings are reached, are matters governed by the Air Force Act and the regulations made thereunder.

The voting procedure for reaching findings at a court martial raises important questions about the protection of individual members' independence. In courts martial composed of multiple

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members of differing ranks, there is a risk that the views of senior members will dominate deliberations and that junior members will feel unable to express dissent or to vote against the views of their superiors. This risk is a specific manifestation of the unlawful command influence problem within the deliberation room itself, and it requires specific procedural protections.

The practice of voting in reverse order of seniority, which requires the most junior members to vote first before the most senior, is an important procedural protection against the dominance of senior views in deliberation. This practice, which is used in various military justice systems including the American system, ensures that junior members must commit to a position before knowing the views of their seniors, protecting their independence in reaching that position. Whether this practice is consistently followed in Bangladesh Air Force courts martial is a matter that the procedural framework should make explicit and that the training of court members should emphasise.

41.2 The Requirement of Written Reasons: A Reform Imperative

One of the most significant deficiencies in the traditional framework of military court martial proceedings, shared by Bangladesh Air Force law and many other military justice systems rooted in the British colonial tradition, is the absence of a requirement that courts martial provide written reasons for their findings and sentences. The practice in most courts martial, consistent with the tradition of the English jury, is to return a verdict without reasons: the accused is informed of the finding of guilty or not guilty and of the sentence, but not of the reasoning that led to these outcomes.

The absence of written reasons creates serious problems for the transparency and accountability of military justice proceedings, for the ability of appellate bodies to review the correctness of decisions, and for the development of a coherent body of military justice jurisprudence. A finding of guilty without reasons cannot be effectively reviewed on appeal for correctness of the legal analysis or appropriateness of the factual inferences drawn. A sentence without reasons cannot be effectively reviewed for proportionality or consistency. And the absence of a publicly available body of reasoned military justice decisions prevents the development of the kind of transparent, principle-based jurisprudence that a modern legal system requires.

The International Covenant on Civil and Political Rights and its General Comment No. 32 require that those charged with criminal offences receive a reasoned judgment in all cases, whether civilian or military. This requirement is increasingly reflected in the practice of reformed military justice systems. The Canadian military justice system requires written reasons from military judges in cases tried by judge alone, and the development of a similar requirement for cases decided by panel is under active consideration. The British Court Martial Appeal Court has, through its appellate decisions, created pressure for more explicit reasoning in first-instance military proceedings.

For Bangladesh Air Force law, the introduction of a requirement of written reasons for findings and sentences in courts martial is a reform of fundamental importance. It would significantly enhance the transparency and accountability of military justice proceedings, would provide a proper foundation for appellate review, and would contribute to the development of a body of

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military justice jurisprudence that can serve as a reference for practitioners and a resource for reform.

41.3 The Sentencing Process: Principles, Factors, and Reform

The sentencing phase of a court martial proceeding follows the finding of guilty and involves the determination of the appropriate punishment within the range available to the court. The sentencing process in traditional military law, like the finding process, has been relatively informal: court members deliberate on the sentence in much the same way as they deliberate on the finding, without detailed sentencing guidelines and without necessarily examining systematically the range of factors that are relevant to proportionate and principled punishment.

The reform of military sentencing has been one of the central concerns of military justice reform in comparable jurisdictions in recent years. The 2023 reform in the United States, which transferred sentencing authority from the panel to the military judge in all non-capital cases, was motivated precisely by the recognition that the panel sentencing process produced inconsistent and sometimes disproportionate outcomes that undermined the legitimacy of the military justice system. The military judge, as a legally trained professional with knowledge of sentencing principles and access to comparative sentencing data, is in principle better equipped to impose proportionate and consistent sentences than a panel of officers whose sentencing experience may be limited and inconsistent.

Whether a similar reform would be appropriate for Bangladesh Air Force law is a question that deserves serious consideration. The arguments in favour of judicial sentencing, the consistency, the principled application of sentencing factors, and the protection against the emotional dynamics of panel deliberation, apply with equal force in the Bangladesh context. The argument against judicial sentencing, that the experienced military officer's judgment about the disciplinary consequences of different punishments should be respected, has less weight in a context where the military legal officer system is not yet sufficiently developed to guarantee that the military judge brings the necessary legal knowledge and experience to the sentencing function.

An intermediate approach might be to develop detailed sentencing guidelines for the most frequently occurring offences, specifying the relevant aggravating and mitigating factors and the range of appropriate punishments for each combination of factors, while leaving the ultimate sentencing decision to the court. Such guidelines, modelled on the sentencing frameworks developed in civilian criminal law in various jurisdictions, would promote consistency without eliminating the scope for individual judgment in exceptional cases.

CHAPTER FORTY-TWO: CONFIRMATION, REVIEW, AND THE POST-TRIAL PROCESS

42.1 The Confirmation Process: Structure, Purpose, and Critique

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After a court martial has returned its findings and sentence, the proceedings do not immediately have legal effect. They must first be confirmed by the appropriate authority, typically the officer who convened the court martial or a superior authority designated for this purpose. The confirmation process involves a review of the record of proceedings to ensure that they were conducted in accordance with the law and that the findings and sentence are legally supportable.

The confirmation process serves a legitimate function as a check on the legality of court martial proceedings: it provides an opportunity to identify and correct procedural errors before the findings and sentence take effect, and it ensures that the highest levels of the command hierarchy are informed of and accountable for the exercise of military justice under their command. But the confirmation process also perpetuates the concentration of authority in the convening command that is the source of unlawful command influence concerns.

The confirmation authority's power to disapprove findings or reduce sentences, while nominally a power of mercy, is also a power to override the court's judgment on grounds that need not be legal and need not be disclosed to the accused. An accused who has been convicted and sentenced by a court martial that followed proper procedures has a legitimate interest in the confirmation of those proceedings by an authority that applies clear and disclosed criteria rather than exercising unchecked discretion. And an accused who has been acquitted by a court martial has an equally legitimate interest in the finality of that acquittal, which should not be subject to being set aside by a confirmation authority unhappy with the outcome.

42.2 The Review Process: Staff Legal Officers and the Assessment of Legality

Following confirmation, the proceedings in serious cases are subject to review by legal officers, typically the staff legal officer of the confirming authority, whose function is to assess the legal sufficiency of the proceedings and advise on any legal errors that may have occurred. This review process, while less well-developed than formal appellate review, serves an important function in identifying and correcting legal errors that the confirmation process may have missed.

The quality of the review process depends heavily on the quality of the legal officers conducting it. A review by a legally qualified officer with experience in military law, who is willing to identify errors unfavourable to the institution and advise that they be corrected, provides a meaningful additional check on the legality of military justice proceedings. A review by a legal officer who lacks the experience or independence to identify errors, or who is unwilling to give advice that is institutionally inconvenient, provides only the appearance of legal oversight.

The development of a more rigorous and more transparent review process, with explicit criteria for the identification of legal error, published standards for the assessment of findings and sentences, and a requirement that the results of the review be communicated to the accused as well as to the confirming authority, would significantly enhance the effectiveness of this stage of the military justice process.

42.3 The Finality of Court Martial Proceedings and Its Limits

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The principle of finality in criminal proceedings, which holds that a final verdict should not be re-litigated endlessly, is in tension with the recognition that some final verdicts are wrong and that the justice system must provide mechanisms for correcting wrongful convictions. In the military context, this tension is complicated by the multiple layers of review that exist between the initial court martial finding and any ultimate determination that the proceedings are closed.

The principle against double jeopardy, which protects acquitted persons from being tried again for the same offence, applies in military proceedings as it does in civilian criminal proceedings. This principle is constitutionally guaranteed by Article 35(2) of the Bangladesh Constitution and is reflected in the Air Force Act's provisions on the finality of acquittals. But the application of the double jeopardy principle in the context of the confirmation and review processes requires careful analysis: if a confirming authority sets aside a finding of guilty on legal grounds and orders a retrial, the double jeopardy principle does not prevent that retrial, since the original proceedings have not resulted in a final acquittal. But if an acquittal is confirmed and the proceedings closed, the principle against double jeopardy should prevent any subsequent attempt to re-prosecute the accused for the same conduct.

CHAPTER FORTY-THREE: APPEALS AND CIVILIAN JUDICIAL OVERSIGHT: THE ARCHITECTURE OF REVIEW

43.1 The Right of Appeal in Military Justice: A Comparative Overview

The right of an accused to appeal against a conviction or sentence is one of the fundamental elements of the right to a fair trial in international human rights law. The International Covenant on Civil and Political Rights, in Article 14(5), provides that everyone convicted of a crime shall have the right to have her conviction and sentence reviewed by a higher tribunal according to law. This right applies in military proceedings as well as civilian ones, and the adequacy of the appellate framework available in military justice is one of the key determinants of the overall fairness and legitimacy of the system.

The appellate framework available to persons convicted by court martial under Bangladesh Air Force law is considerably less developed than the appellate framework available to persons convicted by civilian courts. The confirmation and review processes described in the preceding chapter provide a form of review, but this review is internal to the military hierarchy and does not constitute an independent judicial review in the sense that human rights law requires. The question of whether a convicted person may appeal to the civilian courts against the findings or sentence of a court martial is one that is not definitively settled under current Bangladesh law and that deserves careful jurisprudential analysis.

The comparative picture is illuminating. India has established the Armed Forces Tribunal, which provides dedicated appellate review of court martial decisions with the power to allow an appeal where the finding of the court martial is legally not sustainable due to any reason whatsoever, or where the finding involves a wrong decision on a question of law, or where there was a material irregularity in the course of the trial resulting in miscarriage of justice. Further appeal from the

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Armed Forces Tribunal lies to the Supreme Court of India. This two-stage appellate framework, involving both a specialised military appellate body and access to the civilian Supreme Court, provides a model for the development of a more robust appellate framework in Bangladesh.

Canada's framework, as described in the Judge Advocate General's Annual Report for 2024-2025, provides for appeal from court martial decisions to the Court Martial Appeal Court and further appeal to the Supreme Court of Canada. This framework has produced an active body of military justice jurisprudence, including the landmark R v Edwards decision of April 2024, that has significantly shaped the development of the Canadian military justice system in the direction of greater compliance with constitutional rights standards.

The United States provides for appeal from court martial decisions through a hierarchy of service Courts of Criminal Appeals, with further review available at the Court of Appeals for the Armed Forces and, in certain cases, the Supreme Court of the United States. This appellate structure has produced one of the most extensive bodies of military justice jurisprudence in the world, providing a rich resource for comparative analysis and reform.

43.2 The Grounds of Appeal in Military Justice

The grounds on which appeal against a court martial conviction may be brought are a matter of critical importance for the effectiveness of the appellate process. If the grounds of appeal are too narrow, the appellate process will fail to catch many forms of injustice that the first-instance proceedings may have produced. If they are too broad, the appellate process may be overwhelmed by appeals that have no merit and that delay the resolution of cases at the expense of both the accused and the institution.

The grounds of appeal that international human rights standards and comparative military justice practice suggest are appropriate include the following. First, error of law: the court martial applied an incorrect legal principle, misinterpreted the offence provision under which the accused was charged, or applied an incorrect standard of proof or evidentiary rule. Second, error of fact: the court martial's factual findings were unreasonable in the sense that no reasonable tribunal could have reached them on the evidence adduced. Third, procedural error: the conduct of the trial was marred by procedural irregularity that prejudiced the accused and that was not cured during the proceedings. Fourth, unlawful command influence: the proceedings were tainted by improper influence from command authority that compromised the independence or impartiality of the tribunal. Fifth, excessive sentence: the sentence imposed was grossly disproportionate to the offence and the offender's circumstances.

The inclusion of unlawful command influence as a distinct ground of appeal is particularly important. In the American military justice system, where this ground is extensively litigated, the burden of proof requirements for establishing unlawful command influence on appeal have been the subject of extensive jurisprudential development, and the standards that have emerged provide useful guidance for the development of Bangladesh Air Force law.

43.3 The Role of the Civilian Courts in Military Justice

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The relationship between the military justice system and the civilian courts is one of the most constitutionally significant aspects of the overall framework of military law. The civilian courts, including the High Court Division and the Appellate Division of the Bangladesh Supreme Court, are the ultimate guardians of the Constitution, and they have a legitimate role in ensuring that the military justice system operates within constitutional boundaries.

The constitutional writ jurisdiction of the High Court Division, which allows it to issue writs of certiorari, mandamus, and habeas corpus against any person exercising public functions, extends in principle to the review of military justice decisions that are challenged on constitutional or legal grounds. This jurisdiction provides the foundation for civilian judicial oversight of military justice, and its exercise has been a significant force for the progressive alignment of military justice with constitutional standards in various comparable jurisdictions.

In India, the Supreme Court and High Courts have exercised jurisdiction over military justice decisions in a significant body of cases, holding that constitutional rights apply to members of the armed forces and that military courts must satisfy constitutional standards of fair procedure. In Bangladesh, the civilian courts have been somewhat less active in reviewing military justice decisions, but the constitutional framework supports a significant scope for judicial oversight that should be more fully utilised.

The December 2024 amendment to Bangladesh's International Crimes (Tribunals) Act, which as the Daily Star article of October 2025 noted expressly provided that the tribunal has authority to try any individual including members of disciplined forces for crimes against humanity, represents a significant development in the relationship between military law and civilian criminal jurisdiction. The argument that military personnel are answerable only to court martial and not to civilian tribunals was explicitly rejected in the legal analysis of this development, reflecting the constitutional principle that military law operates within, not above, the constitutional order.

43.4 The Reform of the Appellate Framework: Toward Independent Military Justice Review

The reform of the appellate framework for Bangladesh Air Force law is among the most important institutional improvements that could be made to bring the system into closer alignment with constitutional and international human rights standards. The key elements of a reformed appellate framework should include the following.

First, the creation of a dedicated military appellate body, comparable to India's Armed Forces Tribunal or Canada's Court Martial Appeal Court, that would provide expert, independent review of court martial decisions on all grounds including law, fact, procedure, and unlawful command influence. This body should be composed of legally qualified persons, including both military legal officers and civilian judges, and should be structurally independent of the military command hierarchy.

Second, the provision of a further right of appeal from the military appellate body to the civilian courts, specifically the Appellate Division of the Supreme Court, on questions of constitutional

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law and fundamental legal principle. This would ensure that the civilian courts remain the ultimate guardians of constitutional rights in the military justice context.

Third, the establishment of clear and published grounds of appeal, criteria for the exercise of appellate jurisdiction, and standards of review that give applicants and their legal advisers adequate guidance about the appellate process and realistic assessments of the prospects of appeal.

Fourth, the provision of legal aid for the purposes of military appeals, ensuring that the right of appeal is not a theoretical right available only to those who can afford to exercise it but a practical right accessible to all persons subject to military justice.

CHAPTER FORTY-FOUR: THE SPECIAL TRIAL COUNSEL MODEL AND ITS RELEVANCE FOR BANGLADESH

44.1 The American Experience with Special Trial Counsel

The creation of the Office of Special Trial Counsel in the United States, as part of the implementation of the Military Justice Act of 2016 and specifically the reforms addressing sexual assault and other serious offences, represents one of the most significant structural reforms in the history of American military justice. The Special Trial Counsel is a legally qualified military officer who exercises independent prosecutorial authority over the most serious categories of offence, including sexual assault, murder, and other specified offences, independent of the normal chain of command.

The Special Trial Counsel model addresses directly the problem of command authority over the military justice process that has been the source of unlawful command influence concerns since the earliest days of the American military justice system. By removing from commanders the prosecutorial authority over the most serious offences and vesting that authority in an independent legal officer, the reform creates a structural separation between the institutional interests that command authority represents and the exercise of prosecutorial judgment.

The Just Security article from April 2025 marking the 75th anniversary of the UCMJ noted that while the Special Trial Counsel reform represents an important step forward, it has significant limitations. The reform applies only to specified covered offences, leaving the vast majority of courts martial, including those for military-unique crimes like conduct prejudicial to good order and discipline, under commander control. The article argued that these military-unique crimes, because of their inherent ambiguity, are precisely the category in which the risks of racial disparate impact and cognitive bias in prosecutorial decision-making are greatest, and that the argument for independent prosecutorial authority is if anything stronger for these offences than for the specified covered offences.

The article also noted the critique of Professor Rachel VanLandingham that the optimal solution would be to transfer all military cases to federal civilian courts, as some European countries have

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done, rather than to pursue incremental reforms within the military justice framework. This more radical critique, while it represents a minority view in current policy discussions, illustrates the fundamental nature of the structural conflict at the heart of command-controlled military justice and the range of responses that reformers have proposed.

44.2 The Relevance of the Special Trial Counsel Model for Bangladesh Air Force Law

The Special Trial Counsel model is directly relevant to Bangladesh Air Force law in several respects. The structural conflict between command authority and prosecutorial independence is as present in the Bangladesh military justice system as in the American one, and the risk of unlawful command influence arising from this conflict is no less real. The development of an independent prosecutorial function within the Bangladesh Air Force legal framework, at least for the most serious categories of offence, would address this structural conflict in a manner consistent with the direction of international military justice reform.

The institutional framework within which such a reform would operate in Bangladesh differs from the American context in important respects. The Bangladesh Air Force is smaller than the American armed forces, the military legal officer corps is less extensively developed, and the institutional infrastructure for independent prosecutorial authority may need to be built from a less fully developed starting point. These practical considerations argue for a phased approach to reform rather than the immediate wholesale adoption of the American model.

A realistic reform programme for Bangladesh Air Force law might begin by establishing the principle that prosecutorial decisions in the most serious cases should involve independent legal advice from a legally qualified officer who is not part of the command chain of the convening authority. This principle could be given institutional expression through the creation of a Director of Military Prosecutions or equivalent office, modelled on the Canadian Director of Military Prosecutions, who would exercise independent oversight of prosecutorial decisions in serious cases while the command hierarchy retained authority over less serious matters.

44.3 The Canadian Director of Military Prosecutions Model

The Canadian Director of Military Prosecutions, established under the National Defence Act, provides a model for independent military prosecutorial authority that is more fully developed than the American special trial counsel and may be more directly adaptable to the Bangladesh context. The Director of Military Prosecutions is a legal officer who exercises independent authority over the prosecution of serious offences by court martial, independent of the chain of command, and whose decisions about whether to prosecute, what charges to bring, and at what level of court to refer cases are made on the basis of legal criteria rather than command preference.

The Director of Military Prosecutions reported in the 2024-2025 annual report of the Canadian Judge Advocate General that following the Supreme Court's decision in R v Edwards, the office reassessed the reasonable prospect of conviction in cases that had been stayed by military judges, deciding to withdraw charges in five cases and to continue prosecution in three cases. This decision-making process, which involved the independent professional judgment of the Director

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based on legal criteria, illustrates the kind of independent prosecutorial authority that the Director of Military Prosecutions model provides.

The development of a comparable institution for Bangladesh Air Force law, with appropriate adaptations to the Bangladesh institutional context and legal framework, would represent a significant enhancement of the independence and legitimacy of the military justice system.

CHAPTER FORTY-FIVE: COMPARATIVE REVIEW: SUMMARY PROCEEDINGS ACROSS MILITARY JUSTICE SYSTEMS

45.1 Non-Judicial Punishment in Comparative Perspective

The treatment of minor military misconduct through non-judicial or non-formal punishment, without resort to courts martial, is a feature of virtually all military justice systems, though the specific procedures and protections available vary considerably. The comparative analysis of these mechanisms provides useful perspective on the adequacy of the summary proceedings framework under Bangladesh Air Force law and identifies models for reform.

In the American system, Article 15 non-judicial punishment (NJP) is administered by commanding officers and may impose specified minor punishments including reduction in grade, forfeiture of pay, restriction to a specified area, extra duties, and oral reprimand. The accused may reject NJP and demand a trial by court martial, with all the risks and benefits that entails. The reforms of the Military Justice Act of 2016, which required NJP proceedings to take place before an officer who had received training in NJP procedures, represent a modest improvement in the professionalism of the NJP process.

In the United Kingdom, the Armed Forces Act 2006 established the service justice system that includes summary hearing procedures for minor offences by other ranks, with formal appeals mechanisms through the Summary Appeal Court. The Summary Appeal Court, which provides independent judicial review of summary hearing decisions, represents a significant improvement in the protection of rights in summary proceedings relative to the traditional system in which the commanding officer's summary decision was subject only to internal review.

In Canada, the 2024-2025 annual report of the Judge Advocate General noted that the new framework for determining which cases should be managed by the military justice system and which should proceed through the civilian system was fully operative for the first time in the reporting period. This framework, which identifies the factors relevant to the decision about whether a case is appropriately handled within the military justice system, provides a model for the development of clearer criteria for the use of summary proceedings in Bangladesh Air Force law.

45.2 The Proportionality of Summary Proceedings: International Human Rights Standards

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International human rights standards, including those articulated in General Comment No. 32 of the UN Human Rights Committee, require that even minor criminal proceedings satisfy minimum standards of fairness. These standards include the right to be informed of the charges, the right to adequate time and facilities to prepare a defence, the right to be heard by the adjudicator, and the right to have the adjudicator apply the correct standard of proof. The question of whether summary proceedings under the Bangladesh Air Force Act satisfy these minimum standards is one that deserves careful examination.

The right to be heard, which requires that the accused have a genuine opportunity to present her version of events and to challenge the evidence against her, is the most fundamental procedural protection in any adjudicative process. In summary proceedings conducted by the commanding officer, the accused typically has an opportunity to make a statement and to call witnesses, but the procedural framework for exercising these rights is less clearly defined than in formal courts martial. The development of more explicit procedural rules governing the conduct of summary proceedings, and the provision of written guidance to commanding officers on the conduct of fair summary hearings, would enhance the procedural quality of summary justice.

CHAPTER FORTY-SIX: THE JUDGE ADVOCATE GENERAL SYSTEM: INSTITUTIONAL STRUCTURE, FUNCTIONS, AND REFORM

46.1 The Role and Functions of the Judge Advocate General

The Judge Advocate General is the head of the military legal service, the officer responsible for the overall supervision and administration of military law within the armed forces and for the provision of legal advice to the command hierarchy on all legal matters arising in connection with military operations, administration, and justice. The role of the Judge Advocate General is pivotal in the overall architecture of military law, and the character of the institution, its independence, its professional quality, and its institutional influence, is one of the key determinants of the overall quality of military justice.

In the Bangladesh Air Force, the legal service functions are performed by officers trained in law who provide legal advice to commanders at all levels, advise courts martial as judge advocates, conduct investigations, and perform a range of other legal functions within the service. The development of this legal service into a genuinely professional and genuinely independent corps of military legal officers is one of the most important institutional investments that the Bangladesh Air Force can make in the quality of its justice system.

The institutional independence of the military legal service from the operational command hierarchy is a matter of fundamental importance. A legal service whose officers are fully integrated into the operational chain of command, whose careers depend on the goodwill of operational commanders, and whose professional judgments are subject to informal pressure from those in authority is not genuinely independent in the sense that a legal service committed to the rule of law must be. The development of a separate career management structure for

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military legal officers, with independence in appointment, promotion, and assignment decisions, is an important structural reform.

46.2 The Judge Advocate General and the Development of Military Legal Culture

The Judge Advocate General bears a special responsibility for the development and maintenance of the legal culture within the armed forces. Legal culture, understood as the set of attitudes, norms, and professional practices that govern the relationship between law and institutional behaviour, is not something that can be created simply by drafting good legislation or issuing clear regulations. It must be cultivated through sustained institutional effort, professional education, leadership example, and the consistent enforcement of legal standards.

The development of a strong legal culture within the Bangladesh Air Force requires several specific institutional commitments. First, legal education and training for all officers, not just legal specialists, must be of sufficient quality and depth to give every officer a working understanding of their legal obligations and the framework within which they must exercise their authority. Second, the institutional leadership of the Air Force must demonstrate, through its own conduct and its responses to legal advice, that it takes legal obligations seriously and that giving correct legal advice, even when that advice is inconvenient or unwelcome, will not result in adverse institutional consequences for the legal officer. Third, the quality of legal advice and representation provided by the military legal service must be sufficiently high that it commands the respect of the operational community rather than being regarded as a bureaucratic inconvenience.

The model of the Judge Advocate General's annual report, as practised in Canada with the annual report of the Judge Advocate General to the Minister of National Defence, provides a mechanism for the public accountability of the military justice system that could usefully be adopted in the Bangladesh context. Such a report, which provides an overview of military justice activity, identifies significant legal developments and their implications, and makes recommendations for reform, creates a public record of the administration of military justice that contributes to transparency and accountability.

46.3 Legal Education for Non-Legal Officers

The legal education of non-legal officers, those who exercise command authority and who must make decisions with legal consequences in the course of their military duties, is an often-neglected but critically important element of the overall framework of military law. A commanding officer who lacks an adequate understanding of her legal obligations, who does not understand the requirements of the Air Force Act, who does not know the limits of her authority to impose punishment or restrict the freedoms of personnel under her command, is a source of legal risk for the institution and a threat to the rights of those she commands.

The Air Force Academy and the various professional development courses for officers should include substantial and substantive legal education that goes beyond the minimum coverage of the Air Force Act's offence provisions and punishment scales. This education should include the constitutional framework within which air force law operates, the requirements of international

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humanitarian law and its application to air force operations, the principles of fair treatment and due process that apply in all institutional dealings with personnel, and the specific legal obligations that attach to command authority at different levels.

The model of legal instruction at military academies in comparable jurisdictions, including the United States Military Academy at West Point and the Royal Military Academy Sandhurst, provides useful comparative reference. These institutions provide substantial instruction in military law, the law of armed conflict, and military ethics as integral parts of the professional formation of officers, reflecting the understanding that legal literacy is an essential component of military professional competence.

CHAPTER FORTY-SEVEN: CONCLUSION TO PART THREE: THE PROCEDURAL FRAMEWORK IN PERSPECTIVE

47.1 The Architecture of Military Justice: What the Analysis Reveals

The detailed examination of the procedural framework of courts martial and summary proceedings under the Bangladesh Air Force Act, conducted in this third Part of the handbook, reveals a system that retains much of its colonial-era structure while operating in a constitutional and international environment that has changed fundamentally since that structure was designed. The general court martial, the district court martial, and the summary court martial, together with the associated procedures of convening authority authority, judge advocate advice, confirmation and review, and appeal, constitute a framework that is functional in its basic architecture but deficient in several important respects.

The most significant deficiency is the concentration of authority in the convening command that creates both the reality and the appearance of institutional control over military justice outcomes. This concentration is structural rather than personal: it produces incentives for bias and unfairness regardless of the good faith of individual actors within the system. Addressing it requires structural reform, not merely injunctions to individual officers to behave fairly. The structural reforms most important in this regard are the development of independent prosecutorial authority, the reform of the court member selection process, the development of robust career protections for military legal officers, and the creation of an independent appellate mechanism.

The second significant deficiency is the inadequacy of the formal protections for the rights of accused persons at every stage of the proceedings, from pre-trial investigation through to appeal. The right to legal representation, the right to know the evidence against oneself, the right to a fair hearing before an impartial adjudicator, the right to appeal: all of these are formally acknowledged in the framework but are not given sufficiently robust practical expression in the procedures and institutional arrangements that govern their exercise.

The third significant deficiency is the absence of a developed body of military justice jurisprudence in Bangladesh. Without published reasons for courts martial decisions, without a

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developed appellate jurisprudence, and without the scholarly and institutional engagement with military law that produces jurisprudential development, the framework of Bangladesh Air Force law lacks the living legal culture that would give it intellectual vitality and progressive direction.

47.2 The Path Forward: Essential Reforms and Their Justification

The essential reforms identified through the analysis in this Part may be summarised as follows. The creation of an independent military appellate body, with jurisdiction to review all court martial decisions on grounds of law, fact, procedure, and unlawful command influence, is the most urgent single reform. Without an effective appellate mechanism, all other procedural improvements at the first-instance level are of limited value, since there is no reliable mechanism for correcting errors when they occur.

The reform of the convening authority's role, specifically the separation of prosecutorial authority from command authority at least for the most serious offences, is the second most important structural reform. The development of a Director of Military Prosecutions or equivalent institution, modelled on the Canadian experience and adapted to the Bangladesh context, would address the structural source of unlawful command influence at its root.

The development of robust career protections for military legal officers performing judicial and advisory functions is the third essential reform. These protections, modelled on the structural safeguards identified by the Canadian Supreme Court in R v Edwards as necessary for genuine judicial independence, would give practical content to the principle of independence that should govern all exercises of judicial power within the military justice system.

The introduction of a requirement of written reasons for courts martial decisions, the development of detailed sentencing guidelines, and the reform of summary proceedings to provide clearer procedural protections for accused persons are important reforms that can be implemented within the existing legislative framework through regulation and institutional practice, without requiring legislative amendment.

The comprehensive legislative reform of the Air Force Act that these and the other reforms discussed in this handbook require is a longer-term project that will require sustained commitment from the institution, the legislature, and the legal community. But the case for that reform, built through the analysis of Parts One, Two, and Three, is compelling and is grounded in the constitutional values that the Bangladesh Air Force, as a servant of the constitutional order, is committed to upholding.

47.3 Looking Ahead to Part Four: The Rights of Accused Persons

Part Four of this handbook will examine the rights of accused persons in detail, building on the procedural framework analysed in Part Three to provide a comprehensive account of the legal protections available to individuals subject to military justice proceedings. It will examine the right to legal representation in depth, the right against self-incrimination and its application in military investigations, the right to disclosure of prosecution evidence, the right to challenge evidence obtained through improper means, the right to a speedy trial, and the constitutional

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guarantee of equality before the law in the military context. It will also address the specific challenges faced by vulnerable persons in military justice proceedings, including junior personnel, women, and those suffering from mental health conditions, and the adequacy of the current framework in addressing these challenges.

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End of Part Three

Editorial Note: Part Four of this handbook will proceed to a detailed examination of the rights of accused persons in Bangladesh Air Force law, addressing each fundamental right with the depth, comparative perspective, and critical engagement that the rule of law within the institution demands.

The author dedicates Part Three to the ideal of genuine military justice: a system that is not merely a mechanism of institutional control but a living expression of the rule of law, worthy of the trust of those it serves and of the constitutional democracy it exists to defend.

This handbook is intended as an educational and scholarly resource. It does not constitute legal advice. Officers seeking guidance on specific legal questions arising in the course of their duties should consult the legally qualified advisers of the Bangladesh Air Force.

PART FOUR

THE RIGHTS OF ACCUSED PERSONS IN BANGLADESH AIR FORCE LAW: CONSTITUTIONAL FOUNDATIONS, PROCEDURAL GUARANTEES, AND THE JURISPRUDENCE OF MILITARY FAIRNESS

PREFATORY NOTE TO PART FOUR

The preceding three parts of this handbook have traced the philosophical and historical foundations of Bangladesh Air Force law, examined the substantive offences that the law prohibits and the punishments it prescribes, and analysed the procedural architecture through which military justice is administered. Part Four now arrives at what many scholars and practitioners regard as the moral and constitutional core of any legal system worthy of the name: the rights of the person accused of an offence. This is the terrain upon which the law declares, in terms that brook no compromise, what it owes to every individual whom the institutional machinery of prosecution has chosen to pursue.

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The study of the rights of the accused is not merely a study in procedural mechanics. It is a study in the philosophy of criminal justice, in the history of struggles for human dignity against institutional power, in the theory of the state and its limits, in the relationship between individual freedom and collective security, and in the peculiar and difficult challenge of reconciling all of these considerations within the specific institutional context of a military service. These are subjects of extraordinary intellectual depth and continuing political significance.

The Bangladesh Air Force, like every organised military institution in the democratic world, faces a challenge that has no simple resolution. On one hand, the effective administration of military discipline requires that the institution be able to investigate and punish misconduct with a degree of certainty, speed, and decisiveness that civilian criminal justice systems are not designed to provide. On the other hand, every person who wears the uniform of the Bangladesh Air Force is also a citizen, a person, a human being possessed of dignity and entitled to the protections that a constitutional democracy promises to all. These two demands pull in different directions, and managing the tension between them is the central task of military rights jurisprudence.

This Part approaches that task from multiple directions. It examines the textual foundations of the rights of the accused in the Air Force Act of 1953 and in the Constitution of the People's Republic of Bangladesh. It traces the philosophical roots of each major right, tracing concepts back through the history of legal and political thought to understand why these particular rights came to be recognised as fundamental. It examines comparative jurisprudence from other military justice systems, with particular attention to recent developments in Canada, the United Kingdom, the United States, India, and Australia. It analyses the specific provisions of Bangladesh Air Force law against international standards, identifying areas of conformity and areas where the existing framework falls short of what justice and constitutional obligation require. It engages critically with controversies and unresolved tensions. And throughout, it maintains the conviction that the intellectual engagement of officers with these questions is itself a contribution to the institution's integrity.

This Part also introduces, in greater depth than previous Parts, perspectives from contemporary legal philosophy, including the human rights turn in international law, the capabilities approach of Amartya Sen and Martha Nussbaum as applied to institutional contexts, the procedural justice theory of Tom Tyler, and the increasingly influential framework of transitional constitutionalism in societies such as Bangladesh that have moved through periods of authoritarian governance toward democratic renewal. These theoretical frameworks are not mere academic decoration. They provide analytical tools that make it possible to evaluate the rights framework of Bangladesh Air Force law against principled standards rather than merely against the positive law of comparable jurisdictions.

CHAPTER FORTY-EIGHT: FOUNDATIONS OF THE RIGHTS OF THE ACCUSED: PHILOSOPHY, THEORY, AND CONSTITUTIONAL ARCHITECTURE

48.1 Why Rights of the Accused Matter: The Philosophical Case

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The instinctive response of any institution confronted with misconduct by its members is to pursue punishment. Punishment serves the institution's interests in discipline, order, and the deterrence of future misconduct. The rules of evidence, the procedural protections for the accused, the right to legal representation, the right of appeal: from the perspective of institutional efficiency, these look like obstacles rather than assets. They slow down the process of bringing the guilty to justice. They allow the clever or the well-resourced to escape consequences that they deserve. They complicate what could, in their absence, be a swift and decisive institutional response to wrongdoing.

This perspective is understandable, and it has defenders in the literature of criminal justice theory. But it is ultimately and profoundly wrong. The rights of the accused exist not in spite of the interests of justice but in service of them. They exist because experience teaches, with the insistence of historical repetition, that systems without these protections do not produce justice. They produce something else entirely: the appearance of justice masking the reality of power, the systematic targeting of the disfavoured, the confirmation of institutional prejudices through proceedings whose outcome is determined before the first witness is heard.

The philosophical case for the rights of the accused has several distinct strands. The first and most foundational is the argument from human dignity. This argument, whose most influential modern formulation appears in the work of Immanuel Kant and has been developed in the twentieth and twenty-first centuries by thinkers including John Rawls, Ronald Dworkin, and, in the context of international human rights law, by the drafters of the Universal Declaration of Human Rights and the International Covenant on Civil and Political Rights, holds that every human being possesses an inherent dignity that cannot be traded away for any institutional or social benefit. The accused person, however guilty, however heinous the offence charged, retains this dignity. The rights of the accused in the criminal process are the procedural expression of that dignity. To deny those rights is to treat the accused not as a person but as an object, a means to the institutional end of demonstrated punishment rather than an end in herself.

The second strand is the argument from fallibility. No human institution is infallible. Military investigators make mistakes. Witnesses lie. Memory is unreliable. Institutional interests can distort judgment. The commanding officer who convenes a court martial has a personal interest in the outcome that the formal requirement of impartiality cannot entirely eliminate. The rights of the accused, the right to know the case against oneself, the right to confront and cross-examine witnesses, the right to present exculpatory evidence, the right of appeal, exist precisely to create checks against the inevitable fallibility of human judgment in the prosecution of criminal charges. They exist because we know, with the certainty of historical experience, that without them innocent people will be convicted of offences they did not commit, and convictions of the guilty will be achieved through procedures so fundamentally unfair as to undermine the legitimacy of the institution that administers them.

The third strand is the argument from institutional legitimacy. A military justice system that does not protect the rights of the accused is a system that will not command the confidence of those who operate within it. The Bangladesh Air Force depends for its effectiveness on the commitment and morale of its personnel. Personnel who believe that the military justice system is arbitrary, biased, or designed to serve institutional convenience rather than justice will not give

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their full commitment to the institution. Research in organisational psychology, particularly the procedural justice research of Tom Tyler and his collaborators, consistently demonstrates that people's acceptance of institutional authority depends less on the outcomes that authority produces than on their perception of the fairness of the procedures through which those outcomes are reached. When people believe the process was fair, they accept unfavourable outcomes with greater equanimity and greater willingness to maintain their commitment to the institution. When they believe the process was unfair, even favourable outcomes generate resentment and disengagement.

The fourth strand, of particular relevance in the Bangladesh context, is the argument from democratic accountability. In a constitutional democracy, the coercive power of the state over individuals must rest on a legitimate foundation. For military justice, that foundation is provided by the legal framework that constrains the exercise of military authority. When that framework fails to protect the rights of the accused, the exercise of military authority is no longer grounded in legitimate law. It is grounded in institutional power alone. And institutional power, ungrounded in legitimate law, is precisely what the Constitution of Bangladesh, with its guarantee of fundamental rights and its commitment to the rule of law, was designed to prevent.

48.2 Constitutional Architecture: The Fundamental Rights Framework

The Constitution of the People's Republic of Bangladesh, 1972, establishes in its Part III a framework of fundamental rights that applies to all persons, including military personnel, subject to the modifications that the nature of military service makes necessary. Understanding this framework and its relationship to the Air Force Act of 1953 is essential to understanding the rights of the accused in Bangladesh Air Force law.

Article 27 of the Constitution establishes the equality of all citizens before the law and their entitlement to equal protection of the law. This is a foundational principle of the entire legal order, including the military legal order. It means that the rules applied to an accused person in a military justice proceeding must be applied consistently and without discrimination. It means that the quality of the legal representation available to the accused must not depend on the accused's rank, connections, or institutional standing. It means that the decision whether to prosecute must not be influenced by considerations of ethnic identity, religion, or political opinion.

Article 31 guarantees to every citizen the right to be treated in accordance with law wherever the citizen may be. This provision, while broader in its reference than the criminal process specifically, has been interpreted by Bangladesh courts as a general guarantee of legality in the exercise of state power, including the military justice power. It requires that every step in the military justice process be authorised by law, that no power be exercised without lawful basis, and that the exercise of discretionary powers be within the limits that the law prescribes.

Article 32 guarantees the right to life and personal liberty, providing that no person shall be deprived of life or personal liberty save in accordance with law. This provision is of direct relevance to military detention, pre-trial confinement, and the execution of sentences of imprisonment. The detention of an accused person pending trial, the confinement of a convicted

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person following sentence, and the physical sanctions prescribed by military law all engage this constitutional guarantee. They must all be authorised by law and administered in accordance with lawful procedures. The constitutional minimum of due process that Article 32 implies is not exhausted by the mere existence of a legal provision permitting the relevant action. The action must also be administered through procedures that are substantively fair.

Article 33 establishes specific safeguards against arbitrary arrest and detention, including the right to be informed of the grounds of arrest, the right to consult and be defended by a legal practitioner of one's choice, and the right of a detained person to be produced before a magistrate within twenty-four hours of arrest. The applicability of these protections to military arrest and detention has been a matter of some controversy in Bangladesh, as in other South Asian jurisdictions. The better view, consistent with the text of the Constitution and with the emerging consensus of comparative constitutional law, is that these protections apply to military detention as they apply to civilian detention, subject to any specific modifications authorised by the Constitution or by the Air Force Act acting pursuant to a constitutionally valid legislative purpose.

Article 35 provides a cluster of rights specifically directed to the criminal process. Article 35(1) prohibits ex post facto punishment. Article 35(2) prohibits double jeopardy. Article 35(4) protects against compelled self-incrimination. Article 35(5) prohibits torture and cruel, inhuman or degrading treatment or punishment. Article 35(3) provides that every person accused of a criminal offence shall have the right to a speedy and public trial by an independent and impartial court or tribunal established by law. These provisions are directly applicable to courts martial proceedings under the Air Force Act, and they establish constitutional minima from which the Act cannot derogate.

The relationship between these constitutional guarantees and the specific provisions of the Air Force Act of 1953 is mediated by the interpretive principle that legislative provisions should, where possible, be read consistently with constitutional requirements. Where a provision of the Air Force Act can be read either in a manner that is consistent with constitutional rights or in a manner that is not, the interpretation consistent with constitutional rights should be preferred. Where a provision of the Act cannot be read consistently with constitutional rights without distorting its text beyond recognition, the constitutional guarantee prevails.

48.3 International Law Dimensions: The ICCPR and Beyond

Bangladesh acceded to the International Covenant on Civil and Political Rights in 2000, bringing into its legal framework an international human rights obligation that directly bears on the rights of the accused in military proceedings. The ICCPR, in its Articles 9, 14, and 15, establishes a comprehensive framework of rights applicable to criminal proceedings, including military proceedings.

Article 9 of the ICCPR protects the right to liberty and security of the person. It requires that anyone arrested be informed promptly of the reasons for arrest, that anyone arrested on a criminal charge be brought promptly before a judge, that trial occur within a reasonable time or the person be released, and that anyone deprived of liberty be entitled to take proceedings before

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a court for determination of the lawfulness of the detention. These requirements apply to pre-trial detention of military personnel. The Human Rights Committee, in its General Comment 35, has specified that the guarantee of prompt judicial review of detention is not diminished by the military character of the detention or the military character of the tribunal exercising jurisdiction.

Article 14 of the ICCPR is the most comprehensive fair trial provision in the international instruments. It establishes equality before courts and tribunals, the right to a fair and public hearing by a competent, independent, and impartial tribunal, the presumption of innocence, and a specific list of minimum guarantees for the accused in criminal proceedings. These minimum guarantees include the right to be informed promptly of the charges, the right to adequate time and facilities for the preparation of a defence, the right to communicate with and be defended by counsel of one's choice, the right to free legal assistance where the interests of justice so require and the accused lacks the means to pay, the right to examine or have examined the witnesses against the accused, the right to have free assistance of an interpreter, and the right not to be compelled to testify against oneself.

Article 14(5) of the ICCPR requires that everyone convicted of a crime shall have the right to have the conviction and sentence reviewed by a higher tribunal. This provision is directly applicable to courts martial convictions. The Human Rights Committee has consistently held that the Article 14(5) guarantee requires a genuinely independent review of both the conviction and the sentence, not merely a formal supervisory process. Internal military review, conducted by officers in the same chain of command as those who convened the court martial, does not satisfy the requirements of Article 14(5) as understood by the Human Rights Committee.

The UN Human Rights Committee's General Comment 32, adopted in 2007 but continuing to evolve in its application through subsequent jurisprudence, provides the most authoritative international interpretation of Article 14. It establishes that the right to a fair trial applies in full to military courts. It affirms that the status of a tribunal as a military tribunal does not, in itself, affect the applicability of the fair trial guarantees. What matters is whether the specific institutional arrangements and procedures of the military tribunal satisfy those guarantees. The General Comment identifies the independence and impartiality of the tribunal, the right to legal representation, the right to be informed of charges, and the right to appeal, as among the guarantees that apply without modification to military proceedings.

The Principles Governing the Administration of Justice through Military Tribunals, adopted by the United Nations Sub-Commission on the Promotion and Protection of Human Rights and now generally referred to as the Decaux Principles, provide a more specific set of international standards for military justice systems. These Principles, while not legally binding in the same sense as the ICCPR, represent an authoritative articulation of the emerging international consensus on the minimum standards that military justice systems must meet in order to be compatible with human rights law. Among the most important of the Decaux Principles for the rights of the accused are Principle 7, which establishes the independence of military judges, Principle 10, which provides that all accused persons have the right to be assisted by defence counsel of their choice, Principle 11, which guarantees the right to an interpreter, Principle 12, which provides the right to be informed promptly of the charges, Principle 13, which protects the right to adequate time and facilities to prepare a defence, Principle 14, which guarantees the right

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to examine prosecution witnesses and call defence witnesses, Principle 15, which prohibits compelled self-incrimination, Principle 16, which requires the presumption of innocence, Principle 17, which provides for public hearings, and Principle 19, which requires effective appeal rights.

The interaction between these international standards and the specific provisions of Bangladesh Air Force law is a subject to which this Part returns repeatedly. The key point to note at the outset is that Bangladesh's accession to the ICCPR creates a legal obligation to ensure that the provisions and practices of Bangladesh Air Force law conform to the standards of the Covenant. This obligation is not merely aspirational. It is a real legal commitment, and its implementation requires ongoing assessment of the adequacy of existing provisions and practices.

48.4 Theoretical Frameworks for Evaluating Military Rights Systems

Four theoretical frameworks from contemporary jurisprudence and political philosophy are particularly useful for evaluating the rights framework of Bangladesh Air Force law. Each illuminates a different dimension of the problem and collectively they provide a comprehensive analytical toolkit.

The first is the procedural justice theory developed by social psychologist Tom Tyler and subsequently elaborated in the legal context by scholars including Lawrence Solum, Gillian Hadfield, and Robert MacCoun. Procedural justice theory begins from an empirical observation: people's assessment of the legitimacy of legal institutions and their willingness to comply with law depend primarily on their perception of the fairness of the procedures those institutions employ rather than on the substantive outcomes those procedures produce. People accept adverse outcomes, including punishment, as legitimate when they believe that the process through which those outcomes were reached was fair. Conversely, even favourable outcomes produce resentment and institutional disengagement when the procedure through which they were reached is perceived as unfair.

Applied to military justice, procedural justice theory suggests that the rights of the accused are not merely individual entitlements but structural conditions for the legitimacy of the military justice system as a whole. A court martial process that denies effective legal representation, that withholds evidence from the accused, that allows the convening authority to select the members of the tribunal without regard to impartiality standards, and that provides no genuine right of appeal, will not produce institutional outcomes that the service community regards as legitimate, even when those outcomes are substantively correct. The perceived unfairness of the procedure undermines the authority of the outcome. This is not an argument against discipline; it is an argument that genuine discipline requires genuine fairness.

The second framework is the capabilities approach developed by Amartya Sen and Martha Nussbaum. In the specific context of institutional design, the capabilities approach asks not merely whether formal rights exist but whether individuals have the genuine practical capability to exercise those rights. The right to legal representation means little if the accused cannot access competent military legal counsel and cannot afford civilian legal counsel. The right to present evidence in one's defence means little if the mechanisms for obtaining that evidence are

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effectively closed to persons who lack institutional connections or financial resources. The right of appeal means little if the appellate mechanism operates through the same chain of command that conducted the original prosecution. The capabilities approach demands that we evaluate the military rights framework not by the formal provisions of the Air Force Act but by the practical realities of what the accused can actually do when subject to military prosecution.

The third framework is drawn from the legal philosophy of rights, specifically from Ronald Dworkin's influential conception of rights as trumps. For Dworkin, rights function as constraints on the pursuit of collective goods. The right of the accused to a fair trial is not a consideration that can be traded off against the institutional interest in efficient prosecution. It is a constraint that defines the boundary of what institutional authority may legitimately do. The institutional interest in obtaining a conviction, in maintaining discipline, in demonstrating that misconduct will be punished swiftly and decisively, cannot be pursued at the cost of the accused's rights. When the exercise of institutional authority violates the rights of the accused, it is not a case of the collective interest overriding the individual interest. It is a case of the institution acting outside the limits of its legitimate authority.

The fourth framework, of particular relevance to Bangladesh, is that of transitional constitutionalism. This framework, developed by scholars including Ruti Teitel and Transitional Justice Review contributors, analyses the distinctive challenges faced by legal systems in societies transitioning from authoritarian or colonial governance to constitutional democracy. Bangladesh is, in an important sense, such a society. Its legal system retains inherited colonial structures, including the Air Force Act of 1953, while operating within a constitutional framework that commits the state to human dignity and the rule of law. The political transitions Bangladesh has experienced since independence, including periods of military governance and the profound political changes of August 2024, have created both challenges and opportunities for the reform of inherited legal institutions. Transitional constitutionalism provides a framework for understanding both the constraints and the possibilities of reform in this context.

CHAPTER FORTY-NINE: THE RIGHT TO LEGAL REPRESENTATION IN BANGLADESH AIR FORCE LAW

49.1 The Foundational Importance of the Right to Counsel

Of all the rights that the law guarantees to an accused person, the right to legal representation is perhaps the most practically significant. It is the right through which all other rights become effective. The right to know the charges against oneself, the right to present evidence in one's defence, the right to challenge the prosecution's evidence, the right to invoke the presumption of innocence, the right of appeal: each of these rights requires, for its practical exercise, the assistance of a person with the legal knowledge and institutional competence to navigate the complex legal terrain of military criminal proceedings. Without legal representation, the accused person faces the full weight of the military prosecution apparatus alone, without the guidance necessary to understand what rights are available, how to exercise them, and what arguments and evidence are most likely to be effective.

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The importance of this right is recognised across all of the major international human rights instruments. Article 14(3)(d) of the ICCPR guarantees the right to defend oneself through legal assistance of one's own choosing, and to receive free legal assistance where the interests of justice so require and the accused lacks the means to pay. The African Commission on Human and Peoples' Rights, in its jurisprudence developed through cases including Constitutional Rights Project v. Nigeria, has held that the right to choose one's own counsel is an essential component of the fair trial guarantee and that giving a military tribunal the power to veto the accused's choice of counsel constitutes a violation of that guarantee. The European Court of Human Rights, in its jurisprudence on Article 6 of the European Convention on Human Rights, has developed a sophisticated body of case law on the effective exercise of the right to counsel, holding that the right is not merely formal but must be practically meaningful.

49.2 Legal Representation Under the Air Force Act of 1953

The Air Force Act of 1953 addresses legal representation in terms that are, from the perspective of contemporary international standards, significantly limited. The Act's provisions on courts martial do contemplate the appearance of the accused with a friend or adviser, which in practice includes legal practitioners, but the framework for ensuring effective and independent legal representation falls considerably short of what modern standards require.

The most significant limitation in the existing framework is the absence of a guaranteed right to qualified legal counsel at every stage of the proceedings, from the initial investigation through to the completion of any appeal. The Air Force Act contemplates the assistance of a friend or legal advisor at the trial stage, but the investigation stage and the pre-trial period are less comprehensively addressed. This means that an accused person may be investigated, subjected to questioning, confronted with demands for information and documents, and exposed to the full pre-trial machinery of military prosecution, without the assistance of a legal advisor who can ensure that the investigation proceeds lawfully and that the accused's rights in the investigative process are protected.

The second significant limitation is the absence of a guaranteed right to free legal assistance for accused persons who lack the means to retain civilian legal counsel. In the military context, accused persons have access to assistance from the Judge Advocate General's Department, but the independence of legal advisers from that Department from the prosecutorial and command structures of the service is not institutionally guaranteed in the same way that civilian public defenders are independent from the prosecution in civilian criminal proceedings. The question of effective independence of military defence counsel is one of the most contested questions in contemporary military justice jurisprudence.

The third limitation is the restricted ability of the accused to retain civilian legal practitioners in certain circumstances, and the practical barriers, including cost, geographic access, and the technical complexity of military law, that make the exercise of any formal right to civilian legal representation difficult in practice. A right that is formally available but practically inaccessible is, in the capabilities approach framework, not a genuine right at all.

49.3 The Independence of Military Defence Counsel: A Critical Analysis

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The question of whether military defence counsel can be genuinely independent of the military command structure is one of the most searching questions in military legal theory. The structural conditions of military service create powerful pressures toward institutional conformity. A military lawyer serving as defence counsel is an officer in the armed forces, subject to the authority of the chain of command, dependent on the institution for career advancement, posting, and professional evaluation, and embedded in an institutional culture that prizes loyalty and solidarity with the service above most other values. In these conditions, can a military lawyer genuinely function as an advocate for an accused client whose interests may be directly opposed to those of the institution that employs and evaluates the lawyer?

The answer that emerges from comparative military justice jurisprudence is nuanced. It is possible for military lawyers to function as genuinely effective defence counsel, and there are many documented examples in the military justice systems of Canada, the United States, the United Kingdom, and Australia, of military lawyers providing skilled and vigorous defence representation. But this possibility is not guaranteed by the formal existence of a military legal service. It requires specific institutional conditions: a culture within the legal service that values the integrity of the defence function as highly as the integrity of the prosecution function; career protections that insulate defence counsel from adverse professional consequences resulting from the vigour of their advocacy; formal rules preventing the same officer from advising both the prosecution and the defence in related matters; and an appellate mechanism that can provide an external check on the quality of legal representation provided.

The Canadian experience is particularly instructive. Canada's Director of Defence Counsel Services (DDCS) operates as a genuinely independent unit within the Canadian Armed Forces, separated from the prosecutorial function represented by the Director of Military Prosecutions. The DDCS operates under a specific mandate that includes the provision of free legal assistance to accused persons, the independence of defence counsel from prosecutorial pressure, and the professional development of military defence lawyers. The Canadian Supreme Court's 2024 decision in R v Edwards, which reaffirmed the constitutional importance of military judicial independence while upholding the status of military judges who are officers, also implicitly affirmed the importance of structural independence for all participants in the military justice process, including defence counsel.

The United States has similarly developed, through the Judge Advocate General's Corps of the various services, a culture and institutional structure that provides qualified military defence counsel with meaningful independence. The detailed provisions of Army Regulation 27-10, effective January 8, 2025, articulate the attorney-client relationship guidelines for judge advocates and make clear that the professional obligation to the client prevails over any institutional pressure to the contrary. The creation of the Office of Special Trial Counsel in December 2023 has further clarified the separation between prosecution and defence functions in the most serious cases.

Against this comparative background, the absence of comparable structural provisions in the Bangladesh Air Force law framework is a significant deficiency. The development of a genuinely independent military defence legal service, with its own career management structure, its own professional training programme, and institutional protections for the integrity of the

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defence function, is one of the most important structural reforms that the Bangladesh Air Force legal framework needs.

49.4 Access to Civilian Legal Practitioners

The question of access to civilian legal practitioners in courts martial proceedings is one where the formal provisions of the Air Force Act and the practical reality of exercise diverge considerably. The Act does not absolutely prohibit the appearance of civilian legal practitioners in courts martial proceedings, and in practice, in the most serious cases, accused persons sometimes retain civilian lawyers with experience in military law. But the barriers to this are substantial.

The most immediate barrier is cost. Civilian lawyers with expertise in military law are scarce in Bangladesh, and their services are expensive. Junior personnel in the Bangladesh Air Force, who are disproportionately represented among accused persons before courts martial, generally cannot afford civilian legal representation. The formal availability of this right is therefore, in the capabilities approach, largely a formal rather than practical availability for the great majority of accused persons.

The second barrier is the technical complexity of military law and military courts martial procedure. A civilian lawyer without specific expertise in military law may be formally entitled to appear in a court martial but may be practically ineffective in that role, lacking the knowledge of the specific procedural requirements, evidentiary rules, and sentencing practices of military tribunals that effective representation requires. The formal right to civilian representation is of limited value if civilian lawyers are not equipped to exercise it effectively.

The third barrier is the geographic and institutional remoteness of courts martial from centres of legal practice. Courts martial may be held at air force bases that are geographically distant from the urban centres where civilian lawyers practise, creating logistical difficulties for both accused persons seeking representation and lawyers willing to provide it.

Addressing these barriers requires a combination of institutional and legislative reforms. The development of a pro bono programme through the Bangladesh Bar Council for military justice cases, the creation of a civil legal aid facility specifically for military personnel facing court martial, and the development of training programmes for civilian lawyers in military law and procedure, are all measures that would meaningfully improve access to legal representation for accused persons in Bangladesh Air Force proceedings.

49.5 The Right to Counsel at the Investigative Stage

One of the most significant emerging areas of military rights jurisprudence internationally is the question of the right to counsel at the investigative stage, specifically the right to have legal assistance present during interrogation. This question has profound implications for the right against self-incrimination, which is examined in the following chapter, but it also has independent significance as an aspect of the right to legal representation.

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The traditional military law position in many jurisdictions, including that reflected in the Air Force Act of 1953, is that the right to counsel begins at the point of formal charge rather than at the earlier stage of investigation. This position is increasingly at odds with both international human rights standards and the emerging jurisprudence of military justice systems in comparable democracies.

The Human Rights Committee, in its General Comment 32, has affirmed that the right to counsel under Article 14(3)(d) of the ICCPR extends to the pre-trial period, including the investigative stage. The Committee has specifically held that failure to provide accused persons with legal assistance during interrogation may violate the right against self-incrimination if the interrogation results in self-incriminating statements that are subsequently used in the criminal proceedings.

The United States, through the Military Justice Improvement Act and subsequent reforms reflected in the Manual for Courts-Martial 2024, has strengthened the right to counsel at the investigative stage for covered offences. The UK Armed Forces Act and the Queen's Regulations for the RAF provide for legal representation rights that begin from the point of arrest, not merely from the point of charge. The Indian Armed Forces Tribunal has, in a series of decisions since its establishment under the Armed Forces Tribunal Act 2007, interpreted the right to counsel broadly to include the pre-charge investigative stage in cases involving potential deprivation of liberty.

The reform of Bangladesh Air Force law to provide a clear and enforceable right to legal representation from the moment a person becomes a suspect in a military investigation, not merely from the moment of formal charge, is a reform that the requirements of the Constitution and the ICCPR both support and that comparative military justice jurisprudence consistently recommends.

49.6 Quality of Representation: The Doctrine of Effective Assistance

The right to legal representation is not satisfied by the mere formal presence of a legal adviser in the proceedings. It requires effective assistance of counsel: representation that is not merely formal but substantively competent, diligent, and independent. The doctrine of effective assistance of counsel, developed in the United States Supreme Court's landmark decision in Strickland v. Washington (1984) and applied in the military justice context through a substantial body of Court of Appeals for the Armed Forces jurisprudence, provides a standard for evaluating whether the legal representation provided to an accused person meets the minimum requirements of the right to counsel.

The Strickland standard requires the accused to demonstrate that counsel's performance fell below an objective standard of reasonableness and that there is a reasonable probability that, but for counsel's unprofessional errors, the result of the proceedings would have been different. This is a demanding standard, designed to avoid second-guessing the tactical decisions of counsel with the benefit of hindsight. But its application in the military context has produced a body of jurisprudence that identifies specific minimum standards of competence, including the duty to investigate the facts and the law relevant to the defence, the duty to advise the client of available

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defences and the likely consequences of different courses of action, the duty to object to illegally obtained evidence, and the duty to present all available mitigating evidence at the sentencing stage.

Bangladesh Air Force law does not currently contain a developed doctrine of effective assistance of counsel. The development of such a doctrine, whether through judicial decision-making or legislative reform, would provide a practical mechanism for identifying and correcting cases in which the quality of legal representation provided to an accused person fell below an acceptable standard, thereby contributing to the integrity and legitimacy of the military justice process.

CHAPTER FIFTY: THE PRESUMPTION OF INNOCENCE IN MILITARY LAW

50.1 History and Philosophy of the Presumption

The presumption of innocence is the oldest and most fundamental principle of the criminal law in the common law tradition. It holds that every person accused of a criminal offence must be presumed innocent until and unless the prosecution proves guilt beyond a reasonable doubt. The burden of proof lies with the prosecution throughout the proceedings. The accused is not required to prove her innocence. She is not required to establish any explanation for the prosecution's evidence. She may sit in silence, contributing nothing to the proceedings, and if the prosecution fails to prove guilt beyond a reasonable doubt, she must be acquitted.

This principle, stated with deceptive simplicity, has ancient roots. Its most celebrated expression in the English common law tradition appears in the work of William Garrow, the eighteenth-century advocate who famously challenged unreliable prosecution evidence in the criminal courts of England, insisting that witnesses must be proven guilty before they were condemned. The principle was given systematic theoretical expression by the presumption of innocence doctrine that became central to English and American criminal law in the nineteenth century. It was codified as an international human rights standard in Article 11(1) of the Universal Declaration of Human Rights in 1948, Article 14(2) of the ICCPR, and regional human rights instruments.

The philosophical foundations of the presumption of innocence are multiple and interconnected. The argument from dignity holds that treating an accused person as guilty before proof of guilt degrades the person's dignity by denying the presumption of rational agency that is owed to every person. The argument from epistemic humility holds that the presumption reflects a recognition of the state's superior investigative resources and of the possibility that those resources may have been misdirected, and requires that the state demonstrate the factual foundation of its accusation before any adverse consequences follow. The argument from systemic rationality holds that the presumption is a structural requirement of a rational system of criminal justice: if the state must prove guilt rather than the accused must disprove it, the system creates an incentive for the state to exercise its prosecutorial power only in cases where the evidence of guilt is strong.

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50.2 The Presumption in Military Law: Special Challenges

The presumption of innocence faces distinctive challenges in the military justice context that are worth examining with some care. The first and most obvious is the culture of military discipline itself. Military institutions depend on a culture of authority, obedience, and institutional solidarity that does not sit easily with the presumption that the commanding officer's assessment of a subordinate's guilt may be wrong. When a commanding officer refers charges to a court martial, the institutional expectation within the military community is that there is solid reason to believe that the accused has done something seriously wrong. The social dynamics of military units can produce informal presumptions of guilt that precede and contaminate the formal proceedings.

The second challenge is the role of the convening authority in the court martial process. The convening authority, who is a senior commander in the chain of command of the accused, both refers the charges to trial and, in the traditional military justice framework, selects the members of the tribunal that will adjudicate those charges. This structural arrangement creates at least the appearance, and potentially the reality, that the members of the tribunal have been selected by an authority who has already determined that the accused is sufficiently likely to be guilty to warrant trial. The tribunal members are aware that they serve at the pleasure of the convening authority and that their assessment of the case will be visible to that authority. These dynamics are inimical to the effective application of the presumption of innocence.

The third challenge is the informal disciplinary culture of military institutions, in which a person who is the subject of an investigation or who has been charged with an offence is often treated, informally, as having transgressed. Peers, superiors, and subordinates may adjust their interactions with the accused in ways that signal a presumption of guilt before any finding has been made. This informal social presumption is legally irrelevant to the formal proceedings but practically significant for the accused's experience of the military justice process.

50.3 Specific Applications: Burden of Proof, Standard of Proof, and Their Expression in Air Force Act Proceedings

The Air Force Act of 1953 does not contain an explicit statement of the presumption of innocence as a governing principle, but the presumption is generally understood to apply to courts martial proceedings as a matter of the common law tradition from which the Act derives and as a matter of constitutional requirement under Article 35(3). The practical expression of the presumption in the court martial process includes the standard of proof beyond a reasonable doubt, the right of the accused to submit to the court without making any statement, the right not to give evidence if not required to do so, and the burden on the prosecution to prove every element of the charge.

The standard of proof beyond a reasonable doubt requires careful articulation in the military context. A reasonable doubt is not a fanciful or speculative doubt. It is a doubt based on reason and common sense that arises from a careful and impartial consideration of all of the evidence. The degree of certainty required to satisfy this standard is not absolute certainty, since such certainty is rarely available in human affairs. But it is a high degree of certainty, reflecting the

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gravity of the consequences that follow from a criminal conviction and the special importance, in a constitutional democracy, of ensuring that the coercive power of the state is not deployed against a person who may be innocent.

The articulation of the reasonable doubt standard has been the subject of extensive judicial consideration in comparable military justice systems. The Court of Appeals for the Armed Forces in the United States has addressed the content of the reasonable doubt instruction in numerous decisions, cautioning against instructions that appear to lower the standard or to express it in terms that may confuse tribunal members. The Canadian Military Appeals Court has similarly addressed the content of the doubt standard in the military context. The absence of a developed jurisprudence on this specific question in Bangladesh Air Force law is a gap that the publication of court martial decisions and the development of a military justice appellate mechanism would begin to address.

50.4 The Presumption and Pre-trial Confinement

One of the most significant practical tensions between the presumption of innocence and the realities of military justice administration arises in the context of pre-trial confinement. An accused person who is detained pending trial is, in the institutional reality of the situation, being subjected to a significant deprivation of liberty before any finding of guilt has been made. The justifications for this deprivation, including the risk of flight, the risk of interference with witnesses, and the risk of further misconduct, do not depend on a finding of guilt. They are predictions about future risk. But the experience of pre-trial confinement, particularly in a military context where the conditions of confinement may be austere and the institutional stigma of detention may be significant, imposes consequences that are difficult to distinguish in practical terms from punishment.

The Air Force Act of 1953 provides for the arrest and detention of service personnel pending investigation and trial, but the protections against excessive or unnecessary pre-trial confinement are limited. The constitutional guarantee under Article 33 of prompt production before a judicial authority and the requirement that detention be in accordance with law provide some protection, but the specific procedural mechanism for challenging the lawfulness of military pre-trial confinement is not as clearly articulated in Bangladesh Air Force law as it is in the military justice frameworks of comparable democracies.

A significant reform emerging from the United States military justice reform process is the development of clearer procedural standards for pre-trial confinement decisions, including the requirement for a formal hearing before a neutral official, the articulation of specific criteria for confinement decisions, and the availability of appeal against confinement decisions. The ProPublica investigation of 2024 into US military justice reforms noted that commanders still retain significant authority over pretrial confinement decisions in cases not within the jurisdiction of the Office of Special Trial Counsel, and that this authority remains a source of concern for accused persons and their advocates. This concern applies with equal or greater force in the Bangladesh Air Force context, where the procedural framework for challenging pre-trial confinement decisions is less developed.

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CHAPTER FIFTY-ONE: THE RIGHT AGAINST SELF-INCRIMINATION IN BANGLADESH AIR FORCE LAW

51.1 The Ancient Maxim and Its Modern Significance

The right against self-incrimination, expressed in the Latin maxim nemo tenetur seipsum accusare, the proposition that no one is obliged to accuse himself, is one of the oldest and most philosophically significant principles of the common law criminal tradition. Its roots are commonly traced to the struggle in seventeenth-century England against the ex officio oath administered by the ecclesiastical courts and, later, the Court of Star Chamber, under which a person could be compelled to answer questions under oath without any prior indication of what offence was being investigated. The resistance of common lawyers and Parliamentarians to this procedure, expressed most dramatically in the refusal of the Leveller John Lilburne to take the ex officio oath in 1637, laid the groundwork for the recognition of the right against self-incrimination as a fundamental principle of the English common law.

The philosophical foundations of the right against self-incrimination are multiple and have been elaborated over centuries of legal and philosophical scholarship. The most influential contemporary account, associated with the work of scholars including Abe Fortas, R.H. Helmholz, and Albert Alschuler, identifies several distinct rationales. The first is the argument from the inquisitorial danger: in the absence of the right against self-incrimination, the temptation to use torture or other forms of compulsion to extract confessions becomes overwhelming, and the history of legal systems without this protection shows that this temptation is rarely resisted. The right against self-incrimination is, in this understanding, a prophylactic rule designed to prevent the cruelties that follow from allowing the state to use the accused person as an instrument of her own conviction.

The second rationale is the argument from accusatorial procedure: a legal system committed to the adversarial model of criminal justice, in which the prosecution bears the full burden of proving the case against the accused through independent evidence, is incompatible with compelled self-incrimination. To allow the prosecution to compel the accused to provide evidence against herself is to abandon the adversarial model in favour of the inquisitorial model, in which the investigation of truth is conducted by the tribunal itself rather than by competing parties.

The third rationale, associated with the work of Akhil Reed Amar among others, is the argument from dignity: compelling a person to incriminate herself treats her as an object of the state's investigative interest rather than as a subject possessed of autonomy and dignity. The right against self-incrimination is, in this reading, an expression of the respect owed to persons as autonomous agents who cannot be used as mere means to the state's investigative ends.

51.2 The Right Against Self-Incrimination in the Air Force Act and the Constitution

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Article 35(4) of the Constitution of Bangladesh provides that no person accused of any offence shall be compelled to be a witness against himself. This constitutional guarantee directly incorporates the right against self-incrimination into the fundamental law of Bangladesh and applies it to all proceedings, including courts martial proceedings under the Air Force Act of 1953.

The Air Force Act reflects this principle in its provisions on courts martial procedure, which provide that the accused is not required to give evidence and that no adverse inference shall be drawn from the accused's decision not to give evidence. These provisions express the accusatorial model of criminal procedure, in which the prosecution bears the full burden of proof and the accused retains the right to remain silent throughout.

However, the right against self-incrimination in the military context is more complex than its formal statement in the Act and the Constitution might suggest. Several specific issues deserve careful analysis.

The first is the admissibility of statements made by an accused person during the course of a military investigation, before formal charges have been laid. The Air Force Act and the regulations made thereunder address the conditions under which statements may be made by personnel under investigation, but the protections against compelled self-incrimination at the pre-charge investigative stage are less clearly articulated than those applying at the trial stage. The question of whether an accused person who has made a statement during an investigation without having been informed of the right to remain silent can have that statement admitted against them at a subsequent court martial is one of the most practically significant aspects of the self-incrimination right in the military context.

Comparative military justice jurisprudence is instructive on this point. In the United States, Article 31 of the Uniform Code of Military Justice provides a specific military warning, analogous to the Miranda warning in civilian criminal proceedings, that must be given before any interrogation of a person suspected of an offence by a military person. Failure to give the Article 31 warning is a basis for excluding the resulting statement from evidence. The Manual for Courts-Martial 2024 elaborates on the specific requirements of the Article 31 warning and the circumstances in which it must be given. The UK Armed Forces Act provides similar protections in the caution requirement before questioning. Canada's National Defence Act incorporates protections against compelled self-incrimination that apply from the beginning of the investigative process.

The absence of an equivalent mandatory warning requirement in Bangladesh Air Force law is a significant gap. Developing such a requirement, clearly articulating the circumstances in which it must be given, specifying the consequences of non-compliance, and establishing clear rules for the admissibility of statements obtained in violation of the requirement, is an important legislative reform.

51.3 Compelled Disclosure in Administrative Proceedings

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A specific and practically important aspect of the right against self-incrimination in the military context is the question of compelled disclosure in administrative proceedings that may subsequently lead to or inform criminal proceedings. Military personnel are subject to administrative orders and investigations that may require them to provide information, submit reports, and cooperate with institutional inquiries. When such administrative proceedings are followed by criminal proceedings in which the information obtained in the administrative context is sought to be used, the right against self-incrimination is directly engaged.

The principle established in common law jurisdictions, including through the Canadian Supreme Court's jurisprudence on the use immunity doctrine and through the United States Supreme Court's decisions in cases including Kastigar v. United States (1972), is that information compelled in one proceeding under penalty of contempt or discipline cannot be used directly against the person compelled to provide it in a subsequent criminal proceeding. This use immunity principle protects the right against self-incrimination while allowing administrative investigations to proceed with full information.

The application of this principle in the Bangladesh Air Force context is unclear. The Air Force Act and the regulations do not clearly address the question of use immunity for information compelled in administrative proceedings. This is a gap that creates potential injustice for personnel who, having been compelled to disclose information in an administrative context, subsequently find that disclosure used against them in criminal proceedings. Clarifying this area through legislative amendment or regulatory guidance is an important reform.

51.4 Self-Incrimination and Polygraph Evidence

The question of polygraph evidence and its relationship to the right against self-incrimination is one that arises in the military context with particular frequency, given the use of polygraph examinations in security vetting and intelligence contexts. The Bangladesh Air Force, like other military services, may use polygraph examinations as part of security clearance and vetting procedures. The question of whether the results of such examinations can be used in subsequent disciplinary or criminal proceedings, and whether the requirement to submit to such examinations constitutes compelled self-incrimination, raises difficult questions at the intersection of security, privacy, and criminal justice.

The prevailing view in most common law jurisdictions is that polygraph evidence is not admissible in criminal proceedings because its scientific reliability is insufficiently established to meet the standards of admissibility for expert evidence. The question of whether requiring a person to submit to a polygraph examination as a condition of continued service constitutes compelled self-incrimination is conceptually distinct from the question of admissibility and is less clearly resolved.

51.5 Self-Incrimination and Digital Evidence

The emergence of digital communications and digital evidence as a central element of military investigations raises new questions about the scope of the right against self-incrimination. Is a person compelled to provide the password to an encrypted device subject to the self-

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incrimination protection? Is the obligation to provide biometric data for security purposes within the right against self-incrimination? Are documents stored on a government-issued device subject to the same protection as oral statements?

These questions, actively debated in civilian criminal justice systems around the world, have specific implications in the military context where digital communications are pervasive and military personnel routinely use both personal and institutional digital devices. The 2024 and 2025 amendments to military justice rules in the United States and Canada have begun to address some of these questions, but the field remains in rapid development.

Bangladesh Air Force law, like most military legal frameworks in developing jurisdictions, has not yet developed a systematic approach to these questions. The development of clear rules addressing the self-incrimination implications of digital evidence and compelled digital access is an area where legislative and regulatory action is urgently needed as the technology environment of military service continues to evolve rapidly.

CHAPTER FIFTY-TWO: THE RIGHT TO DISCLOSURE OF PROSECUTION EVIDENCE

52.1 The Principle of Disclosure and Its Rationale

The right of an accused person to know the evidence on which the prosecution relies is so fundamental to the concept of a fair trial that it might seem almost too obvious to require statement. If the prosecution case is built on documents, witness statements, physical evidence, or expert opinions, the accused must have access to that evidence in order to prepare an effective defence. Without this access, the accused is fighting in the dark, unable to identify and respond to the specific case that the prosecution will make. Without disclosure, even the most capable and dedicated defence counsel cannot provide effective representation.

The rationale for the disclosure obligation is sometimes expressed in the language of the equality of arms, a principle recognised in Article 14 of the ICCPR and elaborated in the European Court of Human Rights' jurisprudence under Article 6 of the ECHR. The equality of arms principle requires that each party to criminal proceedings have a reasonable opportunity to present their case under conditions that do not place them at a substantial disadvantage vis-a-vis the opposing party. When the prosecution has access to a mass of evidence that it has gathered through the investigative resources of the state and does not disclose that evidence to the defence, the equality of arms is fundamentally violated.

A second rationale for the disclosure obligation, one that has gained prominence in recent years through the development of what Canadian jurisprudence calls the Stinchcombe principle, is that the prosecution's obligation of fairness does not end with the presentation of the strongest possible case against the accused. The prosecution has an obligation to disclose not merely the evidence it intends to use at trial but also any evidence in its possession that is relevant to the accused's guilt or innocence, including evidence that may tend to exculpate the accused. This

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obligation of disclosure of exculpatory evidence, sometimes called Brady material in the US context after the Supreme Court's decision in Brady v. Maryland (1963), reflects the understanding that the prosecution is a minister of justice, not merely an advocate for conviction.

52.2 Disclosure Under the Air Force Act

The disclosure obligations of the prosecution in courts martial proceedings under the Air Force Act of 1953 are significantly less developed than those in the civilian criminal justice systems of comparable common law jurisdictions or in the military justice systems of Canada, the United Kingdom, the United States, and Australia. The Act and the rules made thereunder contemplate that the accused will be informed of the charges and that the prosecution will present its evidence at trial, but the mechanisms for pre-trial disclosure of the prosecution's evidence to the defence are not articulated with the specificity that modern standards require.

This gap has practical consequences. Without a clear legal framework requiring the prosecution to disclose its evidence before trial and at a sufficiently early stage to allow the defence to prepare an effective response, accused persons in courts martial proceedings may encounter prosecution evidence for the first time when it is presented in open court. This does not allow the defence adequate opportunity to investigate the evidence, to identify and interview witnesses who might contradict it, or to obtain expert evidence to challenge its reliability or interpretation.

The reform of the Air Force Act to include a specific and enforceable pre-trial disclosure obligation, modelled on the Stinchcombe principle recognised by the Canadian Supreme Court in R v Stinchcombe (1991) and on the disclosure rules that have become standard in the military justice systems of advanced democracies, is an essential reform for the protection of the rights of accused persons in Bangladesh Air Force law.

52.3 Disclosure of Exculpatory Evidence

The specific obligation to disclose exculpatory evidence, evidence in the prosecution's possession that tends to establish the innocence of the accused or to undermine the prosecution's case, is the most critical element of the disclosure framework. The failure to disclose exculpatory evidence has been identified as a significant source of wrongful convictions in civilian and military justice systems around the world.

In the United States military justice context, the Brady obligation applies to courts martial proceedings through Rule 701 of the Military Rules of Evidence and has been the subject of extensive Court of Appeals for the Armed Forces jurisprudence. The Manual for Courts-Martial 2024 specifies in detail the categories of evidence that the prosecution must disclose and the timelines for disclosure. The recent reforms effected through the various National Defense Authorization Acts have strengthened the disclosure framework, particularly in cases prosecuted by the Office of Special Trial Counsel.

The practical challenge of enforcing the exculpatory evidence obligation is one that military justice systems share with civilian systems. The prosecution may not always recognise evidence in its possession as exculpatory. Investigators may categorise evidence as irrelevant without

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appreciating its potential significance for the defence. Institutional pressures toward conviction may unconsciously influence the prosecution's assessment of what is exculpatory. The development of clear standards for the identification and disclosure of exculpatory evidence, combined with effective sanctions for non-disclosure including the dismissal of charges in egregious cases, is an important element of any comprehensive military justice reform.

52.4 National Security and Disclosure Limitations

One of the specific challenges of military justice proceedings is the potential conflict between the prosecution's disclosure obligations and considerations of national security. Evidence that would be relevant and potentially exculpatory may also be classified information whose disclosure in open proceedings could compromise intelligence sources and methods, endanger ongoing operations, or reveal capabilities that the adversary should not know. The management of this tension between disclosure and security is one of the most complex procedural challenges in military justice.

The standard approach in comparable military justice systems is the development of in camera or closed proceedings in which classified evidence is presented to the tribunal and the accused's counsel, subject to appropriate security clearances, without being disclosed to the public. The Canadian National Security Information Act provides a framework for this approach in the civilian context, and the Canadian Military Appeals Court has developed procedures for handling classified evidence in courts martial proceedings. The UK Government Communications Headquarters and Special Intelligence Service-related evidence in courts martial has been managed through analogous procedures under the Criminal Procedure and Investigations Act and the Justice and Security Act.

Bangladesh Air Force law does not contain a developed framework for managing classified evidence in courts martial proceedings. The development of such a framework, which would allow classified evidence to be considered by appropriately cleared individuals while protecting the accused's right to know the case against them to the maximum extent consistent with legitimate security concerns, is an important reform.

52.5 Victims and Disclosure: The Emerging International Framework

The 2024 reforms to US military justice, noted in earlier parts of this handbook, included specific provisions addressing the disclosure of case information to lawyers representing victims of alleged crimes committed by military personnel. Victims have historically had difficulty accessing information about the prosecution's decisions in their cases, and the reforms directed that an advisory committee examine what case information should be shared with victim counsel. This development reflects the broader recognition, in contemporary military justice reform discourse, that the rights framework of the criminal process must accommodate not just the rights of the accused but also the legitimate interests of victims in the justice process.

Bangladesh Air Force law does not currently contain provisions for victim representation or for the sharing of case information with victim counsel. The development of such provisions, as part of a broader reform of the military justice framework, would bring Bangladesh Air Force law

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into closer alignment with emerging international standards for the treatment of victims in military justice proceedings.

CHAPTER FIFTY-THREE: THE RIGHT TO CHALLENGE ILLEGALLY OBTAINED EVIDENCE

53.1 The Exclusionary Rule and Its Military Application

The exclusionary rule, which provides that evidence obtained in violation of an accused person's rights should be excluded from use in criminal proceedings, is one of the most contested doctrines in criminal procedure law. In civilian criminal justice systems, the rule operates as an incentive for law enforcement agencies to respect the rights of suspects and accused persons in the investigative process: if evidence obtained through violations of rights is inadmissible, investigators have a practical reason to comply with legal requirements in gathering evidence.

The application of the exclusionary rule in military justice proceedings is a question that has been addressed differently in different jurisdictions and that continues to be debated. In the United States, the Military Rules of Evidence contain a specific exclusionary rule, Military Rule of Evidence 311, which provides for the exclusion of evidence obtained in violation of constitutional rights or of the specific rights protections of Article 31 of the UCMJ. The application of this rule in courts martial proceedings has generated a substantial body of jurisprudence from the Court of Appeals for the Armed Forces.

In Canada, the Canadian Charter of Rights and Freedoms, which applies to military proceedings by virtue of the fact that the Canadian Armed Forces are an institution of government, contains in Section 24(2) a provision that evidence obtained in violation of a Charter right shall be excluded if its admission would bring the administration of justice into disrepute. This provision has been applied in courts martial proceedings by the Canadian Military Appeals Court, which has developed its own jurisprudence on the application of Section 24(2) in the military context.

The Air Force Act of 1953 does not contain a specific exclusionary rule. Evidence obtained through violations of the rights of the accused may, in practice, be admitted in courts martial proceedings. The absence of a clear exclusionary rule means that the constitutional rights of the accused in the investigative process lack an effective enforcement mechanism. If violations of those rights do not affect the admissibility of the evidence obtained, investigators have less incentive to respect them. The development of a clear and enforceable exclusionary rule in Bangladesh Air Force law, calibrated to achieve the disciplinary of lawful investigative practice while avoiding the exclusion of reliable evidence in all but the most serious cases, is an important element of any comprehensive rights reform.

53.2 Illegally Obtained Confessions

The specific question of the admissibility of confessions obtained through improper means, including coercion, threats, promises of leniency, or failure to give the required warning of the

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right to silence, is one of the most practically significant aspects of the exclusionary rule in military justice. Confessions are among the most powerful evidence in criminal proceedings, and the risk that confessions may be extracted through improper means in military investigations, given the inherent power imbalance between military investigators and the personnel they investigate, is a real and documented concern.

Article 35(5) of the Constitution of Bangladesh prohibits torture and cruel, inhuman or degrading treatment. The Convention Against Torture, to which Bangladesh is a party, creates a specific obligation to exclude from criminal proceedings any statement that is established to have been made as a result of torture. The UN Human Rights Committee has stated, in its General Comment 32, that the requirement to exclude statements obtained through torture or ill-treatment is non-derogable and applies without qualification to military proceedings.

The Air Force Act of 1953 provides that no statement made by a person in custody or in the course of an investigation shall be used against that person in a court martial unless the statement was made voluntarily. This provision expresses the principle against compelled confessions. But the enforcement of the voluntariness requirement depends on the ability of the accused and of the tribunal to identify and evaluate the circumstances in which a statement was made, and on the willingness of the military justice system to exclude evidence that has been obtained through improper means even when that evidence is reliable and incriminating.

The development of clearer standards for the voluntariness inquiry, the introduction of mandatory electronic recording of all investigative interviews of persons suspected of offences under the Air Force Act, and the development of a clear evidentiary framework for determining the admissibility of statements obtained in the investigative process, are all important reforms for the protection of the right against illegally obtained confessions.

53.3 Search and Seizure in Military Contexts

The rights against unreasonable search and seizure, which in civilian law are typically protected by constitutional provisions and by specific legislative frameworks, apply in a modified form in the military context. Military personnel have reduced expectations of privacy in certain areas, including their accommodation in service housing, their service vehicles, and their official communications. This reduction in privacy expectation reflects the legitimate operational and security interests of the military institution. But it does not mean that military personnel have no privacy rights. The Constitution of Bangladesh, and international human rights standards, protect a residual sphere of privacy even in the military context.

The Air Force Act of 1953 and the rules made thereunder contain provisions for the search of persons and premises in connection with military investigations. The constitutional validity of these provisions depends on their compliance with the requirements of Article 43 of the Constitution, which protects the privacy of the home and correspondence against arbitrary intrusion. The jurisprudence of the Bangladesh Supreme Court on the constitutional privacy guarantee, while not specifically developed in the military context, establishes that searches must be authorised by law, conducted for a lawful purpose, and proportionate to that purpose.

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The specific question of searches of personal electronic devices in the military context, including smartphones, personal computers, and encrypted communications platforms, has become one of the most contested issues in military rights jurisprudence worldwide. The 2024 and 2025 revisions to military search and seizure rules in the United States and the UK both addressed the specific challenges raised by digital searches, including the use of device extraction tools, the treatment of data stored in the cloud, and the scope of authorisation required for digital searches. Bangladesh Air Force law has not yet addressed these questions in any systematic way, creating a gap between the legal framework and the technological realities of contemporary military service.

CHAPTER FIFTY-FOUR: THE RIGHT TO A SPEEDY TRIAL

54.1 The Constitutional and Statutory Basis

Article 35(3) of the Constitution of the People's Republic of Bangladesh guarantees every person accused of a criminal offence the right to a speedy and public trial by an independent and impartial court or tribunal established by law. This constitutional guarantee directly applies to courts martial proceedings under the Air Force Act of 1953. It requires not merely that courts martial eventually be conducted, but that they be conducted within a timeframe that is reasonable given the circumstances of the case.

The right to a speedy trial serves multiple interests. It serves the interests of the accused by limiting the period during which the uncertainty, stigma, and practical burdens of pending charges are borne. It serves the interests of the prosecution by ensuring that witnesses' memories remain fresh and that evidence does not deteriorate or become unavailable. It serves the interests of the institution by ensuring that disciplinary proceedings are resolved promptly, maintaining the deterrent effect of punishment and the integrity of unit discipline. And it serves the interests of justice more broadly by ensuring that the criminal process is not used as a mechanism for ongoing punishment of persons who have not yet been found guilty.

The Air Force Act of 1953 does not contain a specific statutory speedy trial provision comparable to the explicit time limits found in some civilian criminal justice frameworks. The constitutional guarantee of a speedy trial applies, but its practical implementation depends on the institutional culture and practices of the military justice administration rather than on specific statutory time limits.

54.2 Comparative Speedy Trial Standards

The most developed military speedy trial jurisprudence is found in the United States, where Rule for Courts-Martial 707 establishes a specific 120-day time limit from the earlier of the imposition of pre-trial confinement or the preferral of charges to the beginning of trial. This time limit is subject to specified exceptions and excludes certain periods of delay that are attributable to the defence or are outside the prosecution's control. Violation of the speedy trial rule under RCM 707 results in dismissal of the charges, subject to specified conditions.

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The Canadian military justice framework, under the National Defence Act and Queen's Regulations and Orders, contains provisions addressing the timely conduct of military justice proceedings, although the specific requirements and remedies are less elaborately articulated than in the US framework. The Australian Defence Force Discipline Act contains provisions requiring that charges be heard as expeditiously as possible.

The UK Armed Forces Act 2006, as interpreted through the Service Justice Handbook, requires that investigations and prosecutions be conducted with appropriate expedition, and empowers the court martial to stay proceedings as an abuse of process where unreasonable delay has caused substantial prejudice to the accused.

Against this comparative background, the absence of specific statutory speedy trial provisions in Bangladesh Air Force law is a significant gap. The constitutional guarantee of a speedy trial requires practical implementation through specific institutional rules and effective remedies.

54.3 Unreasonable Delay: What Counts and What Does Not

The assessment of whether a particular delay in military justice proceedings is unreasonable requires a contextual analysis. Some factors that are relevant to this assessment are well established in comparative jurisprudence. The length of the delay is the threshold consideration: a delay that would be unreasonable in a simple case may be reasonable in a complex case involving multiple accused, extensive evidence, and difficult issues of military operational security.

The reasons for the delay are also relevant. Delay attributable to the deliberate tactical choices of the defence is generally not counted against the prosecution. Delay attributable to institutional inefficiency, resource constraints, or prosecutorial convenience is weighed more heavily against the institution. Delay caused by the complexity of the investigation or by genuine operational constraints may be more easily excused.

The prejudice to the accused caused by the delay is a critical factor. Prejudice may be evidential, where the delay has resulted in the loss or deterioration of evidence that would have supported the defence. It may be personal, where the accused has experienced extended pre-trial confinement, professional uncertainty, or social stigma during the period of delay. And it may be institutional, where the association between the accused and the pending charges has adversely affected the accused's career within the service.

The development of a clear framework for assessing unreasonable delay in Bangladesh Air Force proceedings, including specific guidance on the factors to be considered, the remedies available for unreasonable delay, and the circumstances in which dismissal of charges is the appropriate remedy, is an important element of the rights reform agenda.

54.4 Delay and Institutional Culture

The chronic problem of delayed military justice proceedings, which is a recognised feature of military justice administration in many jurisdictions including Bangladesh, reflects not merely

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the absence of specific procedural rules but a deeper institutional culture that does not prioritise the speedy resolution of disciplinary cases. Military commands face competing demands on their time and resources. Operational commitments, training schedules, personnel management, and the day-to-day requirements of running a complex technical service all compete with the administration of justice for the attention of commanders and their staffs.

The reform of this institutional culture requires not merely the introduction of new procedural rules but the development of institutional attitudes that treat the timely administration of military justice as an operational priority rather than an administrative inconvenience. The Judge Advocate General's annual reporting, the regular monitoring of case completion times, the development of incentives for timely case management, and the creation of accountability mechanisms for unexplained delay, are all instruments that can contribute to cultural change in this area.

CHAPTER FIFTY-FIVE: THE RIGHT TO EQUALITY BEFORE THE LAW IN THE MILITARY CONTEXT

55.1 Equality and the Military Hierarchy

The military institution is, by its nature, profoundly hierarchical. The rights, duties, authority, and privileges of personnel differ dramatically based on rank, appointment, and seniority. The commanding officer exercises powers over junior personnel that have no civilian equivalent. The senior non-commissioned officer has authority over the junior airman that is backed by the full coercive power of the military legal system. This hierarchy is not merely formal; it is the structural foundation upon which the effectiveness of the military as an institution depends.

The relationship between this institutional hierarchy and the constitutional guarantee of equality before the law is therefore a matter of some complexity. The guarantee of equality does not mean that all persons in the military must be treated identically regardless of rank or appointment. It means that persons in similar situations must be treated similarly, and that differences in treatment must be justified by differences that are legally relevant to the treatment in question.

In the criminal process, this principle requires that the rules of criminal procedure and the standards of evidence apply consistently regardless of the rank of the accused. A general officer accused of a serious offence is entitled to exactly the same procedural protections, the same standards of evidence, the same right to legal representation, and the same right of appeal, as an airman accused of a similar offence. The military hierarchy does not include a hierarchy of procedural rights.

55.2 Equality in Practice: Rank-Based Disparities

The gap between the formal guarantee of equality and the practical reality of courts martial proceedings is a documented feature of military justice systems in many countries. Senior officers accused of serious offences often have advantages that junior personnel lack: access to

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better legal representation, institutional connections that may influence the selection of court members, greater ability to influence the pre-trial process through access to the command structure, and the social capital that allows them to present themselves to the tribunal in ways that may generate sympathy and leniency.

Conversely, junior personnel face disadvantages that senior officers typically do not: limited access to legal representation, dependence on the institution for all aspects of their life and welfare during the proceedings, reduced ability to navigate the institutional procedures of the military justice system, and the social dynamics of a hierarchical institution that may dispose tribunal members to give greater credence to the accounts of more senior personnel.

These disparities are not merely unjust in individual cases. They systematically undermine the legitimacy of the military justice system by creating and reinforcing the perception that military justice operates differently depending on the rank and connections of the accused. This perception is corrosive of institutional integrity and of the morale of junior personnel.

Research into military justice outcomes in comparable systems, including studies of conviction rates and sentencing outcomes by rank in US military courts martial, consistently finds patterns that suggest the existence of rank-based disparities even after controlling for the seriousness of the offence charged. The Villanova Law Review Military Justice and Modernity analysis of 2024 identified persistent disparities in military justice outcomes that deserve sustained institutional attention.

55.3 Gender Equality and the Rights of Female Accused

The rights of female personnel accused of offences in military justice proceedings raise distinct questions that deserve specific attention. The Bangladesh Air Force has a relatively small but growing cohort of female personnel, and the administration of military justice with respect to female personnel involves challenges that are not adequately addressed in the existing framework of the Air Force Act of 1953.

Female accused persons in military justice proceedings may face specific forms of bias and disadvantage that male accused do not. The predominantly male composition of the military judicial and command structure means that the perspectives and experiences of female personnel may not be adequately represented in tribunal composition or command decision-making. The specific forms of misconduct that disproportionately affect female personnel, including sexual harassment and discrimination, may be underreported and underprosecuted. And the social dynamics of a predominantly male institutional environment may create informal presumptions and biases that disadvantage female accused persons.

The 2024 and 2025 reforms to US military justice, driven primarily by concerns about the treatment of sexual assault cases, have produced structural changes including the creation of the Office of Special Trial Counsel with exclusive jurisdiction over sexual offences, the reform of panel selection procedures to reduce command influence, and the introduction of random jury selection provisions. These reforms are relevant to the Bangladesh Air Force context not merely in relation to the prosecution of sexual offences but in relation to the broader question of how

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institutional power and hierarchy affect the rights of all accused persons, including those whose gender places them in a structurally disadvantaged position within the institution.

55.4 Equality and Ethnicity, Religion, and Political Affiliation

The guarantee of equality before the law in military justice proceedings extends to protection against discrimination based on ethnicity, religion, and political affiliation. The history of the Bangladesh Air Force, rooted in the liberation war experience in which Bengali personnel experienced systematic discrimination within the Pakistan military, makes the question of ethnic and cultural equality within the service particularly resonant.

Bangladesh's religious minority communities, including Hindus, Christians, and Buddhists, serve in the Bangladesh Air Force, and the guarantee of equality requires that the military justice system treat their cases with exactly the same standards and protections as those applied to Muslim personnel. The political sensitivities of Bangladesh's post-independence history, including the periods of military governance and the political transitions of 2024, mean that the question of whether political affiliation influences the exercise of military justice discretion is one that cannot be ignored.

The interim government's political transition following the events of August 2024 and the subsequent arrest warrants issued against sixteen officers of the Bangladesh Army in connection with alleged enforced disappearances, noted in several international reports, demonstrate that the intersection of political transition and military justice is a live and urgent issue in contemporary Bangladesh. Ensuring that the military justice system operates with genuine political impartiality, and that its processes are not used as instruments of political settling of scores, is a fundamental requirement of the equality guarantee.

CHAPTER FIFTY-SIX: VULNERABLE PERSONS IN BANGLADESH AIR FORCE JUSTICE PROCEEDINGS

56.1 The Concept of Vulnerability in Legal Proceedings

The concept of vulnerability, as applied in the context of legal proceedings, recognises that certain categories of persons are at particular risk of unfair treatment within the formal justice process as a result of characteristics that place them at a structural disadvantage. These characteristics may include age, mental health status, cognitive disability, trauma history, gender, language barriers, or cultural unfamiliarity with legal institutions and processes. Vulnerable persons may be unable to understand the proceedings against them, may be unable to communicate effectively with their legal advisers, may be especially susceptible to pressure during investigative questioning, or may present to the tribunal in ways that generate false impressions about their culpability.

The recognition of vulnerability as a legally relevant concept in criminal proceedings is a relatively recent development in the history of criminal law, associated with the broader

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emergence of human rights perspectives in the criminal justice field during the late twentieth century. The UN Rules for the Treatment of Women Prisoners and Non-custodial Measures for Women Offenders, adopted in 2010 and known as the Bangkok Rules, represented a significant recognition of the specific vulnerabilities of women in the criminal justice process. The UN Standard Minimum Rules for the Treatment of Prisoners, revised and reissued as the Nelson Mandela Rules in 2015, similarly recognise the vulnerability of certain categories of detained persons and require that their specific needs be addressed.

In the military context, the recognition of vulnerability is even more recent and less developed. Military institutions have traditionally operated on the premise of a uniform standard of competence and responsibility for all personnel above a certain rank or experience threshold. The culture of military service, which prizes toughness, resilience, and self-sufficiency, can create institutional resistance to recognising and accommodating the specific needs of vulnerable persons within the justice process.

56.2 Junior Personnel as Vulnerable Accused

The most numerically significant category of vulnerable accused persons in Bangladesh Air Force proceedings is junior personnel: airmen, corporals, and sergeants who lack the institutional experience, educational background, and social capital of officers. Junior personnel are disproportionately represented among those charged with offences under the Air Force Act, and they face specific vulnerabilities in the military justice process that are not always recognised.

Junior personnel may have limited understanding of the Air Force Act and the specific offences with which they are charged. They may be unfamiliar with the procedural rules of courts martial and with the specific rights available to them as accused persons. They may have difficulty communicating effectively with legal advisers, particularly if the legal adviser is a senior officer with whom they feel uncomfortable discussing the details of their situation frankly. They may be subject to informal pressure from their chain of command regarding how they should respond to charges. And they may lack the institutional standing to challenge the decisions of superiors who have determined that they should be prosecuted.

The development of specific support mechanisms for junior personnel facing military justice proceedings, including plain-language guides to the Air Force Act and the courts martial process, the assignment of a dedicated welfare adviser who is distinct from legal counsel and who can address the personal and practical concerns of the accused, and the training of all participants in the military justice process to recognise and accommodate the specific needs of junior accused, is an important element of a comprehensive reform of the rights framework.

56.3 Mental Health and Military Justice

The specific challenges of mental health in the military context deserve sustained attention in the discussion of vulnerable accused. Military service, with its exposure to combat stress, operational trauma, demanding physical and psychological conditions, and the social isolation that can follow from geographic displacement and operational deployment, creates conditions

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that are associated with elevated rates of mental health conditions including post-traumatic stress disorder, depression, and anxiety disorders.

The relationship between mental health conditions and criminal conduct in the military context is complex and not fully understood. Conduct that comes to the attention of the military justice system as potential misconduct may be, in some cases, a manifestation of an untreated or undertreated mental health condition. Conversely, the process of being accused and tried in a military justice proceeding can itself have significant adverse effects on the mental health of the accused, effects that may be exacerbated by the specific features of the military institutional environment.

The specific mental health-related questions that arise in military justice proceedings include the fitness of the accused to stand trial, the availability and requirements of mental health defences, the relevance of mental health evidence to sentencing, and the adequacy of mental health support for detained personnel. Bangladesh Air Force law, as it currently stands, does not address these questions with the specificity that they require.

The 2025 revisions to the US Manual for Courts-Martial include enhanced provisions for the evaluation of mental health fitness to proceed and for the use of mental health evidence at sentencing. The UK Service Justice handbook addresses the mental health of accused persons through provisions of the Mental Health Act and the Armed Forces Act. Australia's Military Justice Act contains specific provisions addressing the fitness of an accused person to stand trial in the military justice context.

The reform of Bangladesh Air Force law to include clear and comprehensive provisions addressing the mental health of accused persons, from the assessment of fitness to stand trial through to the provision of mental health support for convicted personnel in military custody, is an important and overdue reform.

56.4 Women in the Military Justice Process

The specific vulnerabilities of female personnel in military justice proceedings have two distinct dimensions: the vulnerability of female accused persons and the vulnerability of female complainants and witnesses. Both dimensions require attention in the context of Bangladesh Air Force law.

Female accused persons in military justice proceedings face the specific vulnerability that arises from their minority status in a predominantly male institution. The cultural attitudes that persist within military institutions toward female personnel, attitudes that may include both paternalistic condescension and hostile scepticism, can affect the fairness of the treatment accorded to female accused in ways that are difficult to document but real in their effects. The development of specific training for all participants in the military justice process on the avoidance of gender-based bias, and the monitoring of military justice outcomes for gender-based disparities, are important institutional measures.

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The vulnerability of female complainants and witnesses in military justice proceedings, particularly in cases involving allegations of sexual offending, has been a primary driver of military justice reform internationally. The 2024 reforms in the United States, which created the Office of Special Trial Counsel with exclusive jurisdiction over sexual offences partly in response to concerns about the treatment of sexual offence complaints within military chains of command, represent the most significant structural response to date. The concerns that drove these reforms, including the risk that commands will pressure female complainants not to report offences, the risk that investigators will not take complaints seriously, and the risk that tribunal members drawn from the same institutional culture as the accused will be biased toward acquittal, are concerns that apply with equal force in the Bangladesh Air Force context.

Bangladesh Air Force law does not currently contain specific provisions for the protection of female complainants and witnesses in military justice proceedings. The development of such provisions, including the right of a female complainant to be interviewed by a female investigator, the availability of special measures for the giving of evidence by vulnerable witnesses, and the prohibition of irrelevant questioning about the complainant's sexual history, is an important element of the rights reform agenda.

CHAPTER FIFTY-SEVEN: THE RIGHT OF APPEAL IN BANGLADESH AIR FORCE LAW

57.1 The Fundamental Importance of the Appeal Right

The right of appeal against a conviction and sentence, recognised in Article 14(5) of the ICCPR, is among the most practically important of the rights guaranteed to accused persons in criminal proceedings. It serves multiple functions. It provides a mechanism for correcting errors that occurred in the first-instance proceedings, whether errors of law, errors of fact, procedural errors, or improper sentencing decisions. It provides an incentive for first-instance tribunals to conduct proceedings correctly, knowing that their decisions may be subject to external scrutiny. It provides a mechanism for the development and clarification of the law through the analysis of specific cases by a higher authority. And it provides a degree of consistency in the application of military law across different cases and different commands.

The right of appeal is particularly important in the military justice context because of the specific vulnerabilities of the court martial process, including the concentration of authority in the convening command, the risk of unlawful command influence on tribunal members, and the relative inexperience of many of those who participate in the military justice process. Without an effective mechanism for external review of first-instance decisions, errors in military justice proceedings are likely to go uncorrected. This is especially concerning given that the consequences of errors in courts martial proceedings, which may include long sentences of imprisonment, punitive discharge, and permanent adverse career consequences, are severe and irreversible.

57.2 The Current Review Mechanism Under the Air Force Act

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The Air Force Act of 1953 provides a confirmation and review process for courts martial proceedings, but the adequacy of this process as a genuine right of appeal is deeply questionable. The confirmation process, in which the finding and sentence of a court martial are submitted to the convening authority or to a higher authority for confirmation, is primarily an administrative rather than judicial review. The reviewing authority exercises discretion in considering whether to confirm, reduce, or set aside the finding or sentence, but the review is conducted by officers within the military command hierarchy rather than by an independent judicial body.

This review mechanism, inherited from British military law, was designed to provide a check against the most obvious abuses of the courts martial process, but it does not satisfy the requirements of Article 14(5) of the ICCPR as interpreted by the Human Rights Committee. The Human Rights Committee has consistently held that Article 14(5) requires review by a higher tribunal, meaning an independent judicial body rather than an administrative authority within the same institutional hierarchy as the original decision-maker.

The internal review mechanism of the Air Force Act, while it provides some protection against the most egregious miscarriages of justice, does not provide the kind of independent judicial scrutiny that genuine appellate review requires. It cannot substitute for an independent appellate mechanism with the authority to examine the proceedings on all grounds, including grounds of law and of fact, and with the institutional independence from the military command hierarchy that genuine judicial impartiality requires.

57.3 Comparative Appeal Mechanisms

The comparative landscape of military justice appeal mechanisms is diverse and evolving. The most developed is that of the United States, which has a three-tier appellate structure: the Courts of Criminal Appeals at the service level, the Court of Appeals for the Armed Forces (CAAF) as the final military appellate court, and the Supreme Court of the United States exercising certiorari jurisdiction over military justice matters. The Annual Report of the CAAF for FY 2025 documents the scope and character of military appellate jurisdiction in the United States, reflecting decades of jurisprudential development.

Canada's Court Martial Appeal Court (CMAC) provides independent appellate review of courts martial decisions, exercised by civilian judges who sit on the Federal Court of Appeal as their primary appointment. The CMAC's independence from the military hierarchy is constitutionally important, reflecting the recognition that genuine appellate review of military justice decisions requires institutional separation from the command structure that conducted the original proceedings.

The United Kingdom's Court Martial Appeal Court, established under the Courts-Martial (Appeals) Act 1951 and continued under the Armed Forces Act 2006, provides independent civilian judicial review of court martial decisions on points of law. The UK court has developed a substantial jurisprudence on the specific issues of military justice, including unlawful command influence, the independence of the judge advocate, and the adequacy of sentencing in the military context.

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India's Armed Forces Tribunal, established under the Armed Forces Tribunal Act 2007 and operational from 2009, provides independent judicial review of service matters including courts martial decisions. The Tribunal consists of a Chairperson who is a retired Supreme Court judge and Members who are either retired High Court judges or retired officers of the armed forces of the rank of Major General or equivalent. The inclusion of both legal and military expertise in the tribunal's composition reflects an attempt to balance the requirements of judicial independence with the need for military operational understanding.

Against this comparative background, the absence of an independent appellate mechanism for courts martial decisions in Bangladesh Air Force law is a critical deficiency. The development of such a mechanism, whether through the establishment of a dedicated Military Appeals Court, through the extension of the jurisdiction of the High Court Division of the Supreme Court to include courts martial appeals, or through some other institutional arrangement that provides genuine independence from the military command hierarchy, is the single most important structural reform needed in the Bangladesh Air Force justice system.

57.4 Grounds of Appeal: Legal, Factual, and Procedural

The scope of the right of appeal, specifically the grounds on which an appeal may be brought, is as important as the institutional independence of the appellate body. An appeal right that is restricted to narrow grounds of law, excluding factual errors, procedural irregularities, or sentencing disproportionality, does not provide the comprehensive review that Article 14(5) of the ICCPR requires.

The most comprehensive appeal rights available in military justice systems permit review of the conviction and sentence on all grounds, including questions of law, questions of fact, procedural irregularities, and the adequacy of legal representation at first instance. The Court of Appeals for the Armed Forces in the United States exercises jurisdiction on all these grounds. The Court Martial Appeal Court in Canada similarly exercises broad appellate jurisdiction. The UK Court Martial Appeal Court reviews findings and sentences on grounds of law and, with leave, on grounds of fact.

The development of a Bangladesh military appeals mechanism with comprehensive jurisdiction, including the ability to review factual findings not merely for manifest unreasonableness but on the merits, would represent a significant advance in the protection of the rights of accused persons.

57.5 Unlawful Command Influence in the Appellate Process

Unlawful command influence, the improper influence of superior military authority on the outcome of military justice proceedings, is recognised as the mortal enemy of military justice in the United States jurisprudence. It is a structural risk inherent in any military justice system in which the personnel who constitute the tribunal are subordinate to the authority that directed the prosecution. The risk of unlawful command influence does not disappear at the appellate stage. If the appellate body consists of senior military officers who are themselves susceptible to

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institutional pressure, the appellate review cannot provide the independent check that it is designed to provide.

The experience of military justice systems internationally demonstrates that the structural risk of command influence at the appellate stage can only be addressed through the institutional independence of the appellate body from the military command hierarchy. This means that the appellate body must consist either of civilian judges or of military officers with specific institutional protections against removal, transfer, or adverse evaluation in connection with their appellate decisions.

The Canadian Supreme Court's April 2024 decision in R v Edwards, while upholding the existing system of military judges who are officers, affirmed the importance of structural protections for judicial independence and identified specific institutional conditions that must be satisfied to ensure genuine independence. These conditions include security of tenure during a fixed appointment period, financial independence, and institutional independence from the prosecutorial and command authority. The Bangladesh military justice reform agenda must take these conditions seriously in designing any new appellate mechanism.

CHAPTER FIFTY-EIGHT: THE RIGHT TO A PUBLIC HEARING AND THE TRANSPARENCY OF MILITARY JUSTICE

58.1 Publicity and Its Relationship to Justice

Article 35(3) of the Constitution of Bangladesh guarantees the right to a speedy and public trial. The publicity requirement is not merely a procedural nicety. It is a substantive guarantee of the openness of the justice process that serves multiple functions simultaneously. Public hearings expose the justice process to the scrutiny of society, creating an external check on the conduct of proceedings that internal institutional review cannot provide. They allow affected communities, including the families of accused persons, victims, and the broader service community, to observe how the law is being administered. They generate a public record of the law's application that contributes to legal certainty, consistency, and the development of jurisprudence. And they express the democratic principle that the exercise of state power over individuals should, in general, be visible and accountable.

The tension between the publicity requirement and the specific security, operational, and institutional interests of military justice proceedings is real and must be managed carefully. There are legitimate reasons, in some cases, for restricting public access to courts martial proceedings, including the protection of classified information, the protection of victims of sexual offences, and the protection of the identities of intelligence sources. These restrictions must be, as the international standards require, both necessary and proportionate to the specific purpose they serve in the individual case.

The default position, both under the Constitution and under international human rights standards, is publicity. Restrictions on publicity must be justified by specific reasons applicable to the

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specific case, not by a general rule that courts martial proceedings are confidential. The practice in some military justice systems of treating courts martial proceedings as routinely closed to public observation, in the absence of specific security or welfare justifications, is inconsistent with both constitutional and international standards.

58.2 Publication of Courts Martial Decisions

The publication of courts martial decisions, including the reasons for the findings and the principles applied in sentencing, is an important element of the publicity requirement with consequences that go beyond the individual case. Without published reasons, it is impossible for accused persons, their counsel, or the broader legal community to know how the law is being applied, what arguments have succeeded or failed in similar cases, and whether the outcomes of courts martial are consistent across different cases and different commands.

The absence of a published courts martial jurisprudence in Bangladesh is one of the most significant obstacles to the development of military law as a serious legal discipline and to the establishment of genuine legal certainty in the administration of military justice. No one, including the most experienced military lawyers and legal officers, can reliably advise an accused person about the likely outcome of court martial proceedings when there is no published record of how similar cases have been decided.

The development of a system for publishing courts martial decisions, with appropriate redactions to protect personal privacy and legitimate security interests, is a reform that would have far-reaching beneficial consequences for the quality of legal advice available to accused persons, the consistency of sentencing and other decisions, the development of Bangladesh military law jurisprudence, and the external accountability of the military justice process.

58.3 Media Access and Military Justice

The question of media access to courts martial proceedings and to information about military justice matters raises specific challenges that deserve brief consideration. Military institutions have a traditional resistance to media scrutiny that is rooted in legitimate concerns about operational security and institutional reputation but that can tip over into an institutional culture of secrecy that is inconsistent with democratic accountability standards.

The ProPublica investigation into US military justice reforms, published in 2024, is an example of how investigative journalism can illuminate structural deficiencies in military justice systems that internal review processes fail to identify or acknowledge. The ability of independent media to scrutinise and report on military justice proceedings is an important element of the external accountability that a democratic society requires of its military institutions.

Bangladesh Air Force law does not contain specific provisions governing media access to courts martial proceedings. The default position appears to be that proceedings are not routinely open to media observation, although the constitutional guarantee of a public trial creates a presumption in favour of openness that must be respected. The development of a clear and principled framework for media access to courts martial proceedings, consistent with the constitutional

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public trial guarantee and the legitimate security and privacy interests that may require limited restrictions in specific cases, is an important element of the transparency agenda for military justice reform.

CHAPTER FIFTY-NINE: THE DOUBLE JEOPARDY PRINCIPLE IN MILITARY LAW

59.1 The Principle and Its Foundations

Article 35(2) of the Constitution of Bangladesh provides that no person shall be prosecuted and punished for the same offence more than once. This is the constitutional expression of the double jeopardy principle, one of the oldest and most fundamental principles of criminal law in the common law tradition. The principle reflects a cluster of related values: the protection of individual liberty against the harassment of repeated prosecution, the finality of judicial decisions, and the limitation of the state's capacity to use the criminal process as an instrument of oppression against individuals it has failed to convict.

In the military context, the double jeopardy principle has a specific complexity arising from the existence of multiple forms of disciplinary proceedings that may relate to the same conduct. An accused person may be subject to summary punishment by the commanding officer, to trial by court martial, to administrative action including removal from the service, and to trial in civilian criminal courts, all in connection with the same underlying conduct. The question of whether successive proceedings in different forums constitute double jeopardy in violation of Article 35(2) is one of the most practically significant questions of double jeopardy jurisprudence in the military context.

59.2 Concurrent Military and Civilian Jurisdiction

Bangladesh, like most jurisdictions, recognises that some conduct by military personnel may be subject to concurrent jurisdiction in both the military justice system and the civilian criminal courts. A military officer who commits theft, assault, or another civilian criminal offence may be prosecuted either in civilian courts or in a military court martial. The question is whether prosecution in one forum bars subsequent prosecution in the other.

The traditional answer in most military law jurisdictions is that the same sovereign cannot prosecute twice for the same offence, but that prosecution by one sovereign does not bar prosecution by another for the same conduct. In the Bangladesh context, this means that a prosecution in a court martial does not bar subsequent prosecution in the civilian courts, and vice versa, because the military court and the civilian court are seen as exercising the jurisdiction of different sovereign authorities.

This doctrine, applied with full rigour, is capable of producing outcomes that are inconsistent with the spirit of the double jeopardy guarantee. A person acquitted by court martial of assault on the basis that the evidence did not establish the charge beyond reasonable doubt faces at least the

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theoretical possibility of a subsequent civilian prosecution for the same assault. The development of clear rules governing the relationship between military and civilian proceedings in respect of the same underlying conduct, including rules about information sharing between jurisdictions and the weight to be given to prior acquittals or convictions in subsequent proceedings, is an important element of the double jeopardy reform agenda.

59.3 Summary Punishment and Court Martial: Same Offence?

A specific double jeopardy question that arises frequently in the military context is whether a person who has been subjected to summary punishment by the commanding officer for a particular act of misconduct can subsequently be tried by court martial for the same act. The answer to this question in Bangladesh Air Force law, as in most military law systems, is that summary punishment and court martial are not necessarily successive prosecutions for the same offence in the double jeopardy sense, partly because summary proceedings are not technically criminal proceedings in the constitutional sense, and partly because the characterisation of the offence may differ between summary and court martial proceedings.

But the formal resolution of this question does not address the substantive unfairness of subjecting a person to significant punishment in summary proceedings and then to a further, more severe punishment in court martial proceedings for the same underlying conduct. The emerging international consensus, reflected in the Decaux Principles and in the practice of military justice systems in advanced democracies, is that the principle against double jeopardy should be understood substantively rather than merely formally, so that successive proceedings that effectively punish a person twice for the same conduct violate the principle even if they are technically proceedings of different kinds.

CHAPTER SIXTY: THE RIGHTS OF CONVICTED PERSONS: TREATMENT IN CUSTODY AND POST-CONVICTION RIGHTS

60.1 The Extension of Rights Beyond Conviction

The rights of persons accused of offences under the Air Force Act do not terminate upon conviction and sentence. Convicted persons retain a residual framework of rights that governs the conditions of their detention, their treatment in military custody, their access to legal advice for the purposes of appeal and review, and their entitlement to the protections against cruel, inhuman, or degrading treatment guaranteed by the Constitution and by international human rights instruments.

The Constitution of Bangladesh, in Article 35(5), absolutely prohibits torture and cruel, inhuman, or degrading punishment or treatment. This prohibition applies without qualification to the treatment of convicted persons in military custody. International human rights standards, including the UN Standard Minimum Rules for the Treatment of Prisoners (the Nelson Mandela Rules, as revised in 2015) and the UN Body of Principles for the Protection of All Persons under

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Any Form of Detention or Imprisonment (1988), elaborate the specific conditions of humane treatment that are required in places of detention.

60.2 Military Prisons and Their Governance

The Bangladesh Air Force, in common with the other services, maintains detention facilities for the confinement of persons under military custody. The conditions of these facilities, the treatment of those detained within them, and the governance and oversight mechanisms applicable to them are matters of direct constitutional and international human rights relevance.

The Air Force Act of 1953 addresses military detention to a limited extent, providing for the establishment of military prisons and detention barracks and empowering the relevant authorities to make rules for their management. The rules made under the Act govern the conditions of military confinement, but the comprehensiveness and currency of those rules is difficult to assess from the published literature, and the existence of an independent oversight mechanism for military detention facilities is not clearly established.

The development of a clear and modern framework for the governance of military detention facilities, including independent inspection mechanisms, clear standards of treatment derived from international human rights norms, and accessible complaint procedures for detained persons, is an important element of the comprehensive rights reform agenda.

60.3 Solitary Confinement and Disciplinary Measures in Military Custody

The use of solitary confinement and other disciplinary measures against persons detained in military custody raises specific human rights concerns that have been the subject of increasing international attention. The UN Standard Minimum Rules, as revised in 2015, impose strict limits on the use of solitary confinement, defining it as confinement for twenty-two hours or more a day without meaningful human contact, and providing that it shall be used only in exceptional cases, as a last resort, for as short a time as possible, subject to independent review, and never where it may exacerbate mental health conditions.

The Nelson Mandela Rules also absolutely prohibit indefinite or prolonged solitary confinement (exceeding fifteen consecutive days), solitary confinement of persons with mental or physical conditions that would be exacerbated by such measures, and the use of solitary confinement as punishment.

The application of these international standards to military detention facilities in Bangladesh requires assessment. The Air Force Act and associated rules do not clearly articulate standards for the use of punitive segregation or isolation within military detention facilities that are consistent with the Nelson Mandela Rules, and the absence of an independent inspection mechanism makes it difficult to assess whether existing practices comply with these standards.

60.4 The Right to Continue Legal Proceedings After Conviction

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A convicted person retains the right to pursue post-conviction legal proceedings, including appeals to a higher authority, petitions for review, applications for clemency, and applications to civilian courts for writs of habeas corpus or other remedies. The Air Force Act provides for the confirmation and review process described in the previous chapter, and the constitutional right to petition the High Court Division of the Supreme Court for writs of certiorari, mandamus, or habeas corpus provides an additional avenue of post-conviction relief.

The practical effectiveness of these post-conviction remedies depends on the availability of legal representation to assist convicted persons in pursuing them, on the existence of an effective and accessible mechanism for petitioning for relief, and on the institutional culture of the military justice system with respect to post-conviction review. If the institutional culture treats post-conviction legal proceedings as inconvenient challenges to institutional authority rather than as legitimate exercises of constitutional rights, the formal availability of these proceedings does not translate into effective practical access to post-conviction relief.

CHAPTER SIXTY-ONE: EMERGING ISSUES IN THE RIGHTS OF THE ACCUSED: TECHNOLOGY, ARTIFICIAL INTELLIGENCE, AND DIGITAL EVIDENCE

61.1 Technology and the Transformation of Military Investigations

The rapidly evolving technological environment of the early twenty-first century is transforming the character of military investigations and the nature of the evidence on which military justice proceedings are based. Digital evidence, including electronic communications, social media activity, location data from mobile devices, surveillance footage, and data from military information systems, is increasingly central to the investigation of alleged misconduct by military personnel. This transformation raises profound questions about the rights of the accused in the digital environment that Bangladesh Air Force law has not yet begun to address systematically.

The rights issues raised by digital evidence in military investigations include the Fourth Amendment (or equivalent constitutional) protection against unreasonable search and seizure as applied to digital devices and data; the right against self-incrimination as applied to compelled disclosure of passwords, encryption keys, and biometric authentication data; the right to disclosure of the full scope of digital evidence gathered in the investigation, including evidence that may be exculpatory; the reliability and authentication of digital evidence; and the privacy implications of the use of pervasive surveillance technologies in military environments.

The 2024 revision of the Manual for Courts-Martial in the United States included specific provisions addressing digital evidence and electronic surveillance in military investigations, reflecting the recognition that the existing framework was inadequate for the digital environment. The UK Service Justice Handbook has similarly been updated to address digital evidence and investigative techniques. Australia's military justice framework has been under review with specific attention to the digital evidence challenges of contemporary military service.

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Bangladesh Air Force law has not yet undertaken a comparable systematic review of the implications of digital evidence and digital investigation techniques for the rights of accused persons. The development of a modern digital evidence framework, consistent with both the constitutional rights of the accused and the legitimate investigative needs of the military, is an urgent priority.

61.2 Artificial Intelligence in Military Justice

The deployment of artificial intelligence and machine learning tools in the criminal justice context, including the military justice context, is one of the most rapidly developing and most controversial areas of contemporary legal technology. AI tools are being explored or deployed for a range of functions in the justice process, including the prediction of bail risk and flight risk, the analysis of large bodies of digital evidence, the identification of patterns in disciplinary data, and the support of judicial decision-making through sentencing recommendation tools.

Each of these applications raises specific concerns about the rights of the accused. AI-based risk assessment tools, if used to inform pre-trial confinement decisions, may encode historical biases present in training data, disadvantaging certain categories of accused based on demographic characteristics unrelated to the specific facts of their case. AI analysis of digital evidence may generate conclusions that are opaque in their reasoning and difficult to challenge through cross-examination of witnesses. AI sentencing tools may systematically disadvantage persons whose characteristics do not match the profiles associated with lenient sentencing in the training data.

The June 2025 Harvard National Security Journal article on courts-martial as an alternative to military commissions noted the increasing complexity of evidentiary challenges in military proceedings, particularly in cases involving digital and technical evidence, as a significant emerging challenge for military justice systems. The development of specific rules for the use of AI tools in military justice proceedings, including requirements of transparency and explainability, the right of the accused to challenge AI-generated conclusions, and the prohibition of AI-based decisions that substitute for rather than assist human judgment, is an area where Bangladesh Air Force law needs to develop new thinking.

61.3 Social Media and the Rights of the Accused

The pervasive presence of social media in the lives of military personnel raises specific challenges for the rights of the accused in military justice proceedings. Social media evidence, including posts, messages, photographs, and videos shared on platforms including Facebook, WhatsApp, and TikTok, is increasingly being used in military investigations and proceedings. The legal framework for the collection, authentication, and admission of social media evidence in courts martial proceedings is underdeveloped in Bangladesh Air Force law.

Specific concerns include the privacy implications of accessing social media accounts in the course of an investigation without the knowledge or consent of the account holder; the authentication challenges of social media evidence, which is easily manipulated and of which the provenance is difficult to establish; the reliability of social media evidence as a basis for factual

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findings in courts martial proceedings; and the use of social media activity prior to the alleged offence as character evidence in proceedings.

The development of clear rules for the treatment of social media evidence in courts martial proceedings, consistent with the right to challenge evidence and the requirement that evidence be reliable and fairly obtained, is an important element of the modernisation of Bangladesh Air Force law.

CHAPTER SIXTY-TWO: THE RIGHTS OF THE ACCUSED AND INSTITUTIONAL REFORM: A COMPREHENSIVE AGENDA

62.1 The Case for Comprehensive Reform

The analysis conducted in this Part of the handbook has identified a significant number of specific areas in which the rights framework of Bangladesh Air Force law falls short of what the Constitution requires, what international human rights standards demand, and what the jurisprudence of comparable military justice systems has established as the minimum conditions of a fair and legitimate system of military justice. These areas of deficiency are not isolated technical problems that can be addressed through minor adjustments to existing rules. They reflect structural features of the Air Force Act of 1953 that were designed for a different era, a different constitutional environment, and different assumptions about the relationship between military authority and individual rights.

The case for comprehensive reform of the rights framework is strong and rests on multiple independent grounds. It rests on constitutional obligation: the Constitution of Bangladesh commits the state to the fundamental rights of all persons, including military personnel, and those rights are not adequately protected by the current framework. It rests on international legal obligation: Bangladesh's accession to the ICCPR creates specific and enforceable legal commitments that the current framework does not satisfy. It rests on the requirements of institutional legitimacy: the effectiveness of military discipline depends on the confidence of the service community in the fairness of the justice system, and that confidence is undermined by a system that fails to protect the rights of those subject to it. And it rests on the professional integrity of the institution: an air force committed to the defence of constitutional values should be guided in the administration of its internal affairs by those same values.

62.2 Priority Reforms and Their Implementation

The reforms most urgently needed in the area of the rights of the accused in Bangladesh Air Force law may be grouped into three categories: structural reforms that require legislative amendment, procedural reforms that can be implemented through regulation and institutional practice, and cultural reforms that require sustained institutional commitment and leadership.

The most important structural reform is the creation of an independent appellate mechanism for courts martial decisions, as discussed in Chapter Fifty-Seven. This reform is both constitutionally

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mandated and practically urgent. Without it, the entire rights framework lacks the external enforcement mechanism that gives rights their practical force.

The second most important structural reform is the development of an independent military defence legal service, with its own career management structure, institutional mandate, and professional training programme. The effectiveness of the right to legal representation depends entirely on the quality and independence of the counsel available to provide it.

The third structural reform is the legislative articulation of a comprehensive pre-trial disclosure obligation, consistent with the Stinchcombe principle, requiring the prosecution to disclose all relevant evidence in its possession to the defence before trial. Without this reform, the right to prepare an effective defence is compromised at its foundation.

The most important procedural reforms include the development of a mandatory warning requirement before investigative questioning of persons suspected of offences, analogous to the Article 31 warning in the US context; the development of a clear exclusionary rule for evidence obtained in violation of the rights of the accused; the introduction of mandatory electronic recording of investigative interviews; the development of specific procedures for the management of digital evidence; the articulation of a clear speedy trial framework with specified time limits and effective remedies for delay; and the development of specific procedures for the protection of vulnerable accused persons, including those with mental health conditions and junior personnel.

The cultural reforms needed are perhaps the most important and the most difficult to achieve. They include the development, throughout the officer corps and the command structure, of an understanding that the rights of the accused are not obstacles to the administration of justice but conditions of it; the cultivation of a legal culture in the Judge Advocate General's Department that values the independence and professionalism of defence counsel as highly as the effectiveness of prosecution; the development of institutional attitudes that treat the timely and fair administration of military justice as an operational priority; and the creation of a public commitment, at the highest institutional levels, to the principle that the Bangladesh Air Force administers its internal affairs in accordance with the constitutional values it exists to defend.

62.3 The Bangladesh Post-August 2024 Context and the Reform Opportunity

The political transformation that Bangladesh experienced beginning in August 2024, with the fall of the Awami League government and the establishment of the interim government under Dr Muhammad Yunus, has created both challenges and opportunities for institutional reform across all branches of the Bangladeshi state. The interim government's commitment to institutional reform, including reform of the police, the judiciary, and the constitutional framework, creates a political environment in which proposals for military justice reform may receive a more favourable hearing than they would have in the context of a government with a closer relationship to the military establishment.

The arrest warrants issued in October 2025 against sixteen officers of the Bangladesh Army on charges of enforced disappearance, and the military authorities' response of taking the indicted

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officers into military custody, represent a significant moment in the relationship between military accountability and civilian justice. The question of whether the Bangladesh Air Force legal framework is adequate to the challenges of accountability for serious institutional misconduct, a question that the army proceedings make urgent, is one that the reform agenda for Bangladesh Air Force law must address directly.

The international human rights community's continued scrutiny of Bangladesh's human rights record, including the UK Government's explicit consideration of human rights obligations in its assessment of military training partnerships with Bangladesh documented in the October 2024 parliamentary response, creates additional external pressure for the development of a military justice framework that can withstand international scrutiny. The military reform agenda and the human rights reform agenda are, in the Bangladesh context of 2025 and 2026, increasingly convergent.

62.4 Learning from Comparative Experience: What Works and What Does Not

The comparative experience of military justice reform in other jurisdictions offers important lessons for the Bangladesh reform agenda. The United States experience demonstrates that legislative reform alone, without the development of institutional culture and practice that gives legislative provisions their practical content, is insufficient. The creation of the Office of Special Trial Counsel, while a significant structural reform, has not resolved all of the concerns about command influence and fairness in the US military justice system, as the 2025 commentary in RealClearDefense and Just Security makes clear. Reform requires both structural change and cultural transformation.

The Canadian experience demonstrates that the development of genuine judicial independence within the military justice framework is possible, that civilian oversight of military justice through the Court Martial Appeal Court and the Judge Advocate General's annual report provides meaningful accountability, and that the engagement of parliament and the legal community in the ongoing assessment of military justice is an important driver of progressive reform. The engagement of the Canadian Supreme Court with military justice questions through cases including R v Edwards has provided constitutional grounding for the reform agenda.

The UK experience demonstrates the value of a unified service justice framework, the importance of civilian judicial participation in the military justice process through the judge advocate system, and the beneficial effects of consistent monitoring and reporting on the administration of military justice. The UK's willingness to engage with the European Court of Human Rights' jurisprudence on military justice standards, following cases including Mills v. United Kingdom, demonstrates the productive relationship between international human rights standards and domestic military justice reform.

The Indian experience, with the establishment of the Armed Forces Tribunal, demonstrates both the potential and the limitations of a dedicated military justice review body. The AFT has provided a more accessible mechanism for judicial review of service matters than was previously available, and its jurisprudence has contributed to the development of military law in India. But

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concerns have been expressed about the Tribunal's caseload, resourcing, and the relationship between its decisions and the administrative practices of the services.

These comparative experiences suggest that the Bangladesh military justice reform agenda should aim for a comprehensive and integrated set of structural, procedural, and cultural reforms rather than individual legislative changes, that it should be driven by clear constitutional and international human rights standards rather than merely by comparison with other jurisdictions, and that it should be designed with attention to the specific institutional and political context of Bangladesh.

CHAPTER SIXTY-THREE: JURISPRUDENTIAL PERSPECTIVES ON MILITARY RIGHTS: HART, DWORKIN, AND BEYOND

63.1 H.L.A. Hart and the Command Theory of Military Law

H.L.A. Hart's analysis of law as a system of primary and secondary rules, developed in his masterwork The Concept of Law (1961), provides a useful starting point for thinking about the jurisprudential foundations of military rights. Hart distinguished between primary rules that impose obligations and confer rights on individuals and secondary rules that govern the creation, modification, and application of primary rules. For Hart, the existence of a legal system depends on the social acceptance by those in the system of the secondary rules, specifically the rule of recognition that identifies the criteria of legal validity.

In the military context, Hart's framework illuminates an important tension. The primary rules of military law, those that impose obligations on service personnel and that the Air Force Act articulates in detail, are well established. But the secondary rules of military law, specifically the rules about who has authority to make and change the law, who has authority to adjudicate its application, and what the criteria of legal validity are in the military system, are less clearly articulated in the Bangladesh context. The concentration of authority in the command hierarchy that characterises the Air Force Act reflects an essentially command-based theory of military law in which the superior's authority is the primary criterion of validity, rather than a rule-of-law conception in which the law's authority is independent of the authority of those who apply it.

Hart's separation of legal validity from moral validity, his insistence that the existence of law is one thing and its merit or demerit another, is a double-edged analytical tool in the military rights context. On one hand, it allows us to acknowledge that the Air Force Act is valid law while recognising that it does not adequately protect the rights of the accused. On the other hand, Hart himself acknowledged, against the background of the Nuremberg prosecutions, that the extreme injustice of a legal provision may lead us to deny it the status of law. The question of when inadequate rights protection in military law crosses the threshold from legally valid but morally deficient to legally invalid as a matter of constitutional ultra vires is one of the fundamental jurisprudential questions of Bangladesh military law.

63.2 Dworkin's Rights as Trumps and the Military Context

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Ronald Dworkin's theory of rights as trumps, developed across a series of works including Taking Rights Seriously (1977), A Matter of Principle (1985), and Law's Empire (1986), provides the most influential contemporary philosophical foundation for the rights of the accused in military law. For Dworkin, rights function as side-constraints on the pursuit of collective goods. They cannot be traded off against social utility, institutional efficiency, or even the interests of military discipline. A right is something that an individual is entitled to regardless of whether honouring it would produce the best overall outcome for the institution or the society.

Applied to the rights of the accused in Bangladesh Air Force law, the Dworkinian analysis is clear in its implications. The right to legal representation, the right against self-incrimination, the right to disclosure of prosecution evidence, the right of appeal: these are not considerations to be weighed against the institutional interest in efficient discipline. They are constraints that define the outer boundary of what military authority may legitimately do in the pursuit of discipline. When the administration of military justice violates these rights, it does not represent a legitimate trade-off between competing values. It represents an ultra vires exercise of institutional authority, one that the constitutional order of Bangladesh, properly understood, does not permit.

Dworkin's distinction between rules, principles, and policies is also illuminating in the military rights context. The specific provisions of the Air Force Act are rules: they apply in an all-or-nothing fashion to defined situations. But the rights of the accused are principles: they do not define a precise legal consequence but establish a reason that inclines the decision in a particular direction and that must be given its due weight in any adjudicative decision. The judge advocate in a courts martial proceeding, when confronted with a question about the admissibility of evidence or the adequacy of legal representation, is not merely applying a rule. She is giving effect to a principle, the principle that the accused is entitled to a fair trial, and the appropriate weight of that principle must be assessed in the specific context of the case.

63.3 Amartya Sen and the Capabilities Approach in the Military Context

Amartya Sen's capabilities approach, developed initially in the context of development economics and poverty analysis and subsequently applied to questions of justice in collaboration with Martha Nussbaum, provides a powerful critique of rights frameworks that remain at the level of formal entitlement without addressing whether individuals actually have the capability to exercise those entitlements. For Sen, the just society is not one that formally recognises a list of rights but one that ensures that individuals have the genuine capability to live lives of dignity and full human flourishing.

Applied to the rights of the accused in Bangladesh Air Force law, the capabilities approach demands that we ask not merely whether the Air Force Act formally recognises the right to legal representation but whether accused persons can actually obtain competent, independent legal representation when they need it. It demands that we ask not whether the Act formally provides for disclosure of prosecution evidence but whether accused persons can actually obtain the evidence they need to prepare an effective defence. It demands that we ask not whether a right of appeal formally exists but whether accused persons can actually access an effective appellate mechanism.

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The capabilities analysis consistently reveals that the formal rights framework of Bangladesh Air Force law is significantly more protective than the practical capability to exercise those rights. This gap between formal rights and practical capability is not unique to Bangladesh but is a feature of military justice systems more broadly, particularly in developing jurisdictions where the resources available for legal support services are limited and where the institutional culture does not prioritise the rights of the accused.

Addressing this gap requires not merely legislative reform but the allocation of resources, the development of institutional capacity, and the cultivation of an institutional culture that treats the practical exercise of rights as an institutional obligation rather than an individual's own responsibility.

63.4 John Rawls and the Veil of Ignorance Test for Military Justice

John Rawls's theory of justice, developed in A Theory of Justice (1971) and Political Liberalism (1993), provides another powerful philosophical tool for evaluating the military rights framework. Rawls's method of the original position and the veil of ignorance asks what principles of justice rational persons would choose if they did not know their own position in society, whether they would be among the privileged or the disadvantaged, the powerful or the powerless, the accused or the accusers.

Applied to the design of the military justice system, the veil of ignorance test asks: what system of military justice would rational persons choose if they did not know whether they would be the commanding officer exercising disciplinary authority or the junior airman facing a court martial? The answer, almost certainly, is a system that provides strong procedural protections for the accused, that makes legal representation genuinely accessible, that provides independent appellate review, and that protects against the arbitrary exercise of institutional authority. This is not the system that currently exists under the Air Force Act of 1953.

Rawls's test thus provides a compelling philosophical justification for the comprehensive reform of the rights framework in Bangladesh Air Force law. The existing system reflects the choices of those who designed it from a position of institutional authority, not the choices that all affected parties would make if they were uncertain about the role they would occupy in the system. A just military justice system would be one that any rational participant, uncertain whether they would be the accused or the adjudicator, would agree to in advance.

63.5 The Procedural Justice Framework: Tyler and the Legitimacy of Military Authority

Tom Tyler's empirical theory of procedural justice, grounded in research demonstrating that people's compliance with and support for legal institutions depends primarily on their perception of the fairness of the procedures those institutions employ, provides a practically significant framework for thinking about the relationship between the rights of the accused and the effectiveness of military discipline.

Tyler's research demonstrates that when people believe the process through which institutional decisions are made was fair, whether they were heard, whether their perspective was considered,

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whether the decision-maker was neutral and trustworthy, they accept adverse outcomes with greater equanimity and greater continued support for the institution. Conversely, perceived procedural unfairness, even in the context of substantively correct outcomes, generates resentment and disengagement.

Applied to Bangladesh Air Force law, the procedural justice framework suggests that the rights of the accused are not merely individual entitlements but structural conditions for the effectiveness of military discipline. An accused person who believes that they received a fair trial, that they had effective legal representation, that the evidence was considered fairly, and that the outcome was reached through a legitimate process, is more likely to accept that outcome and to maintain their commitment to the institution, even if convicted. An accused person who believes the process was unfair, that they were denied a genuine opportunity to present their case, and that the outcome was predetermined by institutional authority, is likely to experience the conviction as a profound injustice that damages both their own commitment and the institutional morale of those who observe the proceedings.

The implications of this analysis for the reform agenda are clear: investing in the quality, fairness, and transparency of the military justice process is not a concession to individual rights at the expense of institutional effectiveness. It is an investment in institutional effectiveness itself.

CHAPTER SIXTY-FOUR: CONCLUSION TO PART FOUR: THE RIGHTS OF THE ACCUSED IN PERSPECTIVE

64.1 What the Analysis of Part Four Reveals

The comprehensive examination of the rights of accused persons in Bangladesh Air Force law conducted in this Part of the handbook reveals a system that is formally grounded in constitutional and international legal standards but practically deficient in important respects in its implementation of those standards. The formal framework of the Air Force Act of 1953, while it acknowledges the basic rights of the accused, does not provide the institutional mechanisms, procedural specificity, and structural independence that are necessary to give those rights practical force.

The most significant practical deficiencies identified are the following. The absence of an independent appellate mechanism for courts martial decisions leaves convictions subject only to internal administrative review within the military hierarchy, which does not satisfy the requirements of Article 14(5) of the ICCPR or of Article 35(3) of the Constitution. The absence of a genuinely independent military defence legal service means that the right to effective legal representation is not reliably available to all accused persons, particularly those of junior rank who lack the resources to retain civilian counsel and the institutional standing to demand effective assistance from military legal advisers. The absence of a mandatory pre-trial disclosure obligation means that the accused may not have access to the evidence necessary to prepare an effective defence. The absence of a mandatory investigative warning requirement means that the

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right against self-incrimination is inadequately protected at the investigative stage. The absence of a clear exclusionary rule for improperly obtained evidence means that constitutional violations in the investigative process do not have effective consequences for the admissibility of the evidence obtained.

The broader institutional context, including the absence of published courts martial jurisprudence, the concentration of authority in the convening command, the inadequate framework for the protection of vulnerable accused persons, and the underdeveloped approach to digital evidence and AI-related challenges, compounds these specific deficiencies to create a system that, taken as a whole, is significantly below the standard that the Constitution of Bangladesh, the ICCPR, and the Decaux Principles require.

64.2 The Rights of the Accused as a Mirror of Institutional Values

The final observation of this Part is one that goes beyond the technical analysis of specific rights and remedies. The way in which a military institution treats those of its members who are accused of offences is a mirror of the values of that institution. An institution that takes rights seriously, that invests in the quality and independence of its military justice process, that treats the accused person as a person with dignity and as a member of the professional community entitled to the protections of the law, is an institution that takes its own constitutional and professional obligations seriously.

The Bangladesh Air Force, as an institution committed to the defence of the constitutional order of a democratic republic, should aspire to a military justice system that reflects the constitutional values it serves. This aspiration is not an external imposition. It is a consequence of the institution's own identity and mission. An air force that defends a constitutional democracy should be governed internally by the principles of that constitutional democracy, including the principle that state power over individuals must be exercised through fair and lawful procedures that respect the dignity and rights of those subject to them.

The reform agenda identified in this Part is not a counsel of perfection. It is a programme of achievable improvements, grounded in comparative experience and in the specific requirements of Bangladesh's constitutional and international legal obligations, that would transform the military justice system of the Bangladesh Air Force into one that genuinely merits the confidence of those who serve under it and of the society whose values and institutions it is dedicated to defending.

64.3 Looking Ahead to Part Five: Specific Offences and Their Jurisprudence

Part Five of this handbook will proceed to a detailed examination of the specific offences created by the Bangladesh Air Force Act of 1953, addressing each major category of offence with the depth, comparative perspective, and critical engagement that the seriousness of the subject demands. It will examine the elements of each offence, the principles of construction applicable to the offence provisions, the relationship between Air Force Act offences and parallel offences in civilian criminal law, the sentencing principles applicable to each category, and the jurisprudential controversies that have arisen in connection with specific offences in comparable

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military justice systems. It will also examine the specific offences that reflect the unique character of air force service, including those relating to aircraft, air bases, classified information, and the special duties of officers in command of air operations.

Part Five will also address the politically and professionally sensitive category of offences against the constitutional order, examining the jurisprudential and political dimensions of the provisions in the Air Force Act that govern the conduct of military personnel in relation to the civilian authority of the state. This examination will engage directly with the difficult questions raised by Bangladesh's history of military governance and by the events of recent years, including the political transition of 2024, the army prosecutions of 2025, and the broader question of the relationship between military institutions and constitutional democracy in a society committed to the rule of law and the rights of its citizens.

The author of this handbook invites the reader, whether an officer of the Bangladesh Air Force, a practising advocate, a legal scholar, or an interested citizen, to bring to Part Five the same intellectual curiosity, critical engagement, and commitment to the truth that the best traditions of legal education demand. The law of the armed forces is not merely a technical subject for specialists. It is a window onto some of the deepest questions of political philosophy, constitutional law, and institutional design. Engaging with it seriously is engaging with the question of what kind of institutions we want and what values we are committed to expressing through those institutions.

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End of Part Four

Editorial Note: Part Five of this handbook will proceed to a comprehensive examination of the specific offences created by the Bangladesh Air Force Act of 1953, each addressed with the depth of legal analysis, comparative jurisprudence, historical context, and critical philosophical engagement that the preceding Parts have established as the standard for this work. The author invites officers, practitioners, and scholars to continue their engagement with this material as part of their ongoing commitment to the legal literacy that professional service in the Bangladesh Air Force demands and deserves.

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The author dedicates Part Four to the proposition that every person accused of an offence, regardless of the colour of their uniform, the nature of their alleged misconduct, or the institutional interests that press for their conviction, is entitled to a fair trial, to the presumption of innocence, to effective legal representation, and to the protection of an independent judicial authority. These entitlements are not concessions to the individual at the expense of the institution. They are the conditions on which the institution's claim to legitimacy rests.

This handbook is intended as an educational and scholarly resource. It does not constitute legal advice. Officers seeking guidance on specific legal questions arising in the course of their duties should consult the legally qualified advisers of the Bangladesh Air Force.

PART FIVE

THE SPECIFIC OFFENCES OF BANGLADESH AIR FORCE LAW: ELEMENTS, JURISPRUDENCE, PHILOSOPHY, AND REFORM

PREFATORY NOTE TO PART FIVE

Parts One through Four of this handbook have established the philosophical and historical foundations of Bangladesh Air Force law, examined its substantive provisions and institutional architecture, analysed the procedural framework of courts martial, and explored in depth the rights of accused persons within that framework. Part Five now arrives at the specific substance of what the Bangladesh Air Force Act of 1953 actually prohibits: the catalogue of offences that constitute the Act's primary disciplinary content, the behaviours and omissions that the law treats as grave enough to warrant criminal prosecution before a court martial.

Studying specific offences is not merely a matter of memorising statutory language and punishment scales, though that knowledge is indispensable for the practising officer and judge advocate. It is also an exercise in legal interpretation, in moral philosophy, in institutional history, and in comparative legal analysis. Each specific offence in the Air Force Act carries within its language a set of assumptions about the nature of military discipline, the relationship between the individual and the institution, the values the air force is committed to maintaining, and the limits of acceptable military conduct. These assumptions deserve examination with the same critical seriousness that the rights framework deserves.

This Part examines each major category of offence created by the Air Force Act of 1953. It traces the historical origins of each category, analyses the specific elements of each offence, explores the philosophical and jurisprudential issues raised by each category, examines comparative law from other military justice systems including recent developments in the United States, United Kingdom, Canada, India, and Australia, engages with controversies and unresolved tensions in the law, addresses defences and their theoretical foundations, and makes

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specific observations about areas where the Bangladesh Air Force Act is in need of reform or clarification.

The discussion is organised around the major structural divisions of the Air Force Act's offence provisions rather than a section-by-section analysis. This allows for a more coherent treatment of the jurisprudential themes that cut across the formal categories. Practitioners seeking guidance on a specific section of the Act are directed to the index, which provides cross-references between the thematic organisation of this Part and the specific provisions of the Act.

CHAPTER SIXTY-FIVE: THE ARCHITECTURE OF THE OFFENCES PROVISIONS: AN OVERVIEW AND INTERPRETIVE FRAMEWORK

65.1 The Structure of the Offences Chapters

The offences created by the Bangladesh Air Force Act of 1953 are distributed across several chapters of the Act, with the primary offence provisions contained in the chapters titled Offences and Punishment and the supplementary provisions dealing with civil offences, fraudulent enrolment, and other specific misconduct. The overall architecture of these provisions reveals a deliberate hierarchy of seriousness, from the most gravely punishable offences such as mutiny, cowardice before the enemy, and desertion in wartime, through to the lesser miscellaneous offences at the lower end of the scale.

This hierarchical structure reflects one of the foundational principles of military criminal law: that not all violations of military discipline are of equal gravity, and that the law must calibrate its response to the seriousness of the misconduct. The principle of proportionality, which is a fundamental requirement of both criminal justice and constitutional law, demands that the most severe punishments, including imprisonment and dismissal from the service, be reserved for the most serious offences, while lesser misconduct attracts lesser consequences.

The Act's offence provisions can be grouped into several broad categories. First, there are offences against military authority itself: mutiny, sedition, insubordination, and disobedience. These are offences whose gravest forms strike at the very foundations of the military institution by challenging the authority of command on which the entire organisation rests. Second, there are offences relating to military duty and presence: desertion, absence without leave, malingering, and abandonment of post. These are offences that deprive the service of the personnel it needs, either temporarily or permanently, and that undermine the reliability and readiness upon which effective military operations depend. Third, there are offences in relation to the enemy: misbehaviour before the enemy, cowardice, aiding the enemy, and related conduct. These are the offences that specifically address the conduct of military personnel in the most extreme circumstances of their professional existence, combat operations. Fourth, there are offences relating to air force property and equipment: loss, damage, or misapplication of public property, negligence in handling aircraft and related equipment, and misuse of air force resources. These offences reflect the unique technical responsibilities of air force personnel and the enormous cost and operational significance of military aviation assets. Fifth, there are

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offences relating to professional standards and personal conduct: conduct prejudicial to good order and military discipline, conduct unbecoming an officer, and the various forms of personal misconduct that the Act specifically proscribes. And sixth, there are civil offences, ordinary criminal law violations that military personnel commit and that are brought within military jurisdiction by the Act's provisions.

65.2 The General Principle of Construction: In Favorem Libertatis

Before examining the specific categories of offence, it is important to establish the general interpretive principle that should govern the construction of the offence provisions. The general principle of criminal law construction, recognised in the common law tradition and expressed in the Latin maxim in favorem libertatis, is that ambiguous penal provisions should be construed in favour of the accused rather than in favour of the prosecution. This principle reflects the fundamental asymmetry of the criminal law relationship, in which the state brings the full weight of its coercive authority against the individual, and the consequential requirement that the specific conduct to be punished must be clearly defined.

In the military law context, this principle of narrow construction of penal provisions is in tension with another well-recognised principle: that the language of military law should be construed purposively, in a manner that gives effect to the legislative intent of maintaining military discipline and operational effectiveness. Courts and military tribunals have sometimes been tempted to resolve this tension by reading penal provisions broadly in order to ensure that particular misconduct does not escape punishment. This is an error. The in favorem libertatis principle is not merely a technical rule of construction. It is a consequence of the rule of law requirement that the coercive power of the state be exercised only within clearly defined legal boundaries. Military law is not exempt from this requirement.

The narrow construction principle does not prevent the courts martial from taking a commonsense approach to the interpretation of offence provisions. It does not require that every technical ambiguity in statutory language be resolved in favour of the accused. What it requires is that where the language of an offence provision is genuinely ambiguous, and where two or more constructions are reasonably available, the construction that is more favourable to the accused should be preferred.

65.3 Mens Rea and Strict Liability in Military Law

One of the most important interpretive questions in relation to the specific offences of the Air Force Act is the extent to which each offence requires proof of a guilty mind, a mental element, in addition to the physical act or omission constituting the offence. In ordinary criminal law, the general principle is that criminal liability requires both an actus reus, the physical elements of the offence, and a mens rea, a guilty mind. This principle reflects the moral foundation of criminal law: people should be held criminally responsible only for acts that they chose to perform or omissions that they chose to commit.

In military law, the application of this principle is more complex. Some offences under the Air Force Act are clearly intention-based: desertion, for example, requires proof that the accused

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intended permanently to leave the service, and the distinction between desertion and mere absence without leave turns on this intention. Other offences appear to impose liability for negligence or even for outcomes regardless of any guilty mind, reflecting the military law view that the consequences of negligence in certain contexts, particularly in relation to aircraft and military operations, are so potentially catastrophic that a strict or near-strict liability standard is appropriate.

The question of mens rea in military law has important constitutional dimensions. The presumption of innocence, discussed in Part Four of this handbook, includes a presumption that criminal liability requires a guilty mind. A statutory provision that imposes criminal liability without requiring proof of any mental element, or that reverses the burden of proof with respect to a mental element, must be carefully scrutinised for compatibility with the constitutional guarantee against arbitrary punishment. The mere fact that military discipline is thought to require strict accountability for certain outcomes does not automatically make strict liability constitutional. There must be a proportionate and legitimate purpose that justifies the departure from the ordinary mens rea requirement.

Comparative military law offers useful guidance on this question. The Manual for Courts-Martial 2024 in the United States specifies, for each punitive article, the mental state required for conviction. Some articles require specific intent, others require general intent, and a small number impose something closer to strict liability. The detailed specification of mental elements in the MCM reflects the recognition that the precise definition of the culpable state of mind is essential to fair criminal prosecution. The absence of equivalent specificity in many provisions of the Bangladesh Air Force Act is a source of interpretive uncertainty that reform could address.

65.4 Defences: An Overview

The specific defences available to an accused person charged with an offence under the Air Force Act fall into several categories. The general defences of the common law tradition, including mistake of fact, duress, self-defence, and lack of capacity, are available in courts martial proceedings to the extent that they are relevant to the specific offence charged. Military-specific defences, including the defence of superior orders (addressed in detail below), the defence of lawful excuse for absence, and the defence of justifiable conduct in relation to enemy contact, are specifically relevant to military offences.

The defence of superior orders deserves particular attention because it raises some of the most profound moral and legal questions in military jurisprudence. The general principle, established by the Nuremberg Tribunal and subsequently codified in international law, is that the fact that a person acted pursuant to orders does not relieve that person of criminal responsibility, though it may be considered in mitigation of punishment. But the Nuremberg principle does not mean that superior orders are never a defence. The qualified defence, which prevails in most military justice systems including those of Bangladesh, the United States, the United Kingdom, and Canada, is that superior orders are a complete defence to a charge of an offence if the order was lawful, if the accused did not know and had no reason to suspect that the order was unlawful, and if the accused acted in good faith in compliance with the order.

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The specific application of this defence in the Bangladesh Air Force context raises particular challenges given the institutional history of the service. The events of 1971, in which Bengali military personnel faced the choice of complying with orders to participate in atrocities or resisting those orders at enormous personal risk, demonstrate in the most vivid terms why the distinction between lawful and unlawful orders is not merely theoretical. The constitutional and ethical limits of military obedience, which the Air Force Act's offence provisions assume but do not fully articulate, deserve sustained attention in the interpretation and application of the Act's provisions.

CHAPTER SIXTY-SIX: OFFENCES AGAINST MILITARY AUTHORITY: MUTINY, SEDITION, AND RELATED CONDUCT

66.1 The Gravity and Historical Depth of Mutiny

Of all the offences in the Bangladesh Air Force Act, mutiny stands at the apex of gravity. It is the offence that most directly threatens the fundamental premise of military organisation: that the authority of command must be effective and reliable, that orders must be obeyed, and that collective disobedience or revolt is incompatible with the existence of an organised armed force. Mutiny has been regarded as the gravest military crime across all military traditions, ancient and modern, and the harshness of the penalties prescribed for it in military law codes throughout history reflects the depth of this institutional concern.

The Air Force Act, following the tradition of British military law, defines mutiny in terms that encompass both collective disobedience to military authority and conduct aimed at overthrowing or subverting the authority of the command. The Act provides in its relevant provisions for severe punishment, including in the most extreme cases the death penalty, for those who begin, incite, cause, or conspire with others to cause mutiny in the military, naval, or air forces of Bangladesh. The Act also punishes those who, being aware of an intended mutiny, fail to give information thereof without delay to a commanding officer.

This last provision, the duty to report known or suspected mutiny, raises important questions about the obligations of loyalty and conscience that military law imposes. A service member who has knowledge of planned mutiny by colleagues is required by law to report that knowledge to authority. Failure to do so is itself a criminal offence. This obligation creates potential conflicts with personal loyalties, informal solidarities, and, in extreme cases, with the moral judgment that the planned mutiny is a response to genuinely unlawful command conduct. The tension between the duty to report and the possible moral imperative to resist is one that the law does not fully resolve by simply imposing a reporting obligation.

66.2 The Definition of Mutiny: Elements and Boundaries

The precise definition of mutiny for the purposes of the Air Force Act requires careful analysis, because the consequences of conviction are so severe and the potential for over-broad application is significant. Mutiny in the military law sense is not synonymous with any collective

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expression of discontent or disagreement. Legitimate collective representations to command, formal complaints through proper channels, legal challenges to orders through the grievance procedures of the service, and even vocal expressions of disagreement within the bounds of military protocol, do not constitute mutiny.

Mutiny requires, at minimum, an element of combined action: it must involve more than one person acting collectively. A single individual who disobeys orders, however dramatically, commits the offence of disobedience rather than mutiny. Mutiny also requires an element of intent to override or subvert military authority: the collective action must be directed against the legitimate authority of command rather than, for example, a refusal of a specific unlawful order.

The distinction between mutiny and collective refusal of an unlawful order is one of the most practically and philosophically significant questions in military law. If a body of military personnel collectively refuses to comply with an order that is genuinely unlawful, does that collective refusal constitute mutiny? The answer in most military law systems, including that reflected in the Bangladesh Air Force Act, is that an order that is manifestly unlawful does not create a military law obligation of obedience, and that collective refusal of such an order does not constitute mutiny. But the determination of whether an order is manifestly unlawful is itself a matter of difficulty and controversy, and the institutional pressure to comply with orders that may be unlawful is enormous.

The 2024 Ukrainian mutiny at Voznesensk, in which soldiers of the 187th Battalion refused combat orders and went absent without leave, provides a contemporary illustration of the complexity of this question in a real military context. The soldiers involved faced the choice of compliance with orders they apparently regarded as tactically or morally unacceptable, or collective disobedience with the legal consequences of potential prosecution. The law's treatment of this kind of situation, both in Ukraine and in analogous situations in other military contexts, illustrates the enduring difficulty of the mutiny question.

66.3 Sedition and Its Relationship to Civil Liberties

The offence of sedition in the Air Force Act covers conduct aimed at subverting the loyalty, discipline, or duty of military personnel by words, writing, or other means. Sedition as a military law offence is to be distinguished from sedition as a civil law offence: the military law offence is narrower in its specific focus on military discipline and loyalty, while the civil law offence of sedition has been historically applied to a much broader range of political expression.

The military sedition offence raises significant civil liberties concerns that are particularly acute in the contemporary information environment. Social media, messaging applications, and online platforms allow service personnel to express views, share information, and communicate with each other in ways that were simply not possible when the Air Force Act was drafted in 1953. The question of whether online expression by military personnel constitutes sedition under the Air Force Act is one that the Act's existing language does not adequately address.

In the United States, Article 133 of the UCMJ, conduct unbecoming an officer, and Article 134, the general article covering prejudicial conduct, have been used in 2025 in the context of social

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media expression by military personnel. The January 2025 guidance in the United States military context explicitly identified posts, videos, or tweets celebrating certain forms of political speech as potentially subject to Article 134 prosecution as disloyal statements. The interpretation of Article 133 as applying to social media behaviour reflects the broad and flexible character of the conduct unbecoming offence.

The corresponding provisions of the Bangladesh Air Force Act, which address conduct to the prejudice of good order and military discipline and conduct unbecoming an officer, face analogous interpretive challenges in the social media environment. The development of specific guidance on the application of these provisions to online expression by military personnel, consistent with the constitutional guarantee of freedom of expression in Article 39 of the Constitution of Bangladesh as modified by the legitimate requirements of military discipline, is an important area for regulatory development.

66.4 Failure to Suppress Mutiny: The Obligation of Active Resistance to Internal Disorder

A distinctive and philosophically important provision of military law in many jurisdictions, including the provision of the Air Force Act derived from the British military law tradition, is the obligation not merely to refrain from mutiny oneself but actively to take steps to suppress mutiny when it is committed in the presence of a military person. The failure to do one's utmost to prevent and suppress a mutiny that is being committed in one's presence, or failure to report a known or reasonably suspected mutiny, is itself a criminal offence.

This provision reflects the military law understanding that institutional authority is not merely a concern of command but a collective responsibility of all members of the service. Every member of the Bangladesh Air Force, regardless of rank, has a stake in the maintenance of the discipline that makes the service function, and this collective stake is expressed in the individual legal obligation to resist and report internal disorder.

The practical application of this obligation raises significant questions. What precisely must a military person do to satisfy the requirement of doing their utmost to prevent and suppress mutiny? Is verbal entreaty to the mutineers sufficient? Is physical intervention required even at personal risk? What is the appropriate course of action when the mutiny appears to be a response to genuinely unlawful command conduct? The Air Force Act's silence on these questions requires that courts martial, guided by the general principles of military law and by such comparative jurisprudence as is available, develop answers on a case-by-case basis.

CHAPTER SIXTY-SEVEN: DESERTION AND ABSENCE WITHOUT LEAVE: ELEMENTS, INTENT, AND JURISPRUDENTIAL TENSIONS

67.1 The Fundamental Distinction: Desertion Versus Absence Without Leave

The distinction between desertion and absence without leave is one of the most important and most frequently litigated in military criminal law. Both offences involve a military person's

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absence from duty without authorisation, but they differ crucially in the element of intent. Desertion requires proof that the accused intended permanently to absent herself from the service, or intended to avoid hazardous duty, or intended to shirk important service. Absence without leave, the lesser offence, requires only proof of unauthorised absence without the additional element of intention.

The practical significance of this distinction is enormous, because the consequences of conviction differ dramatically. Desertion, particularly in time of active service or war, is punishable by the most severe penalties that the Air Force Act authorises. Absence without leave, though a serious offence in itself, carries lesser maximum punishments. The difference in consequence for the accused makes the precise definition and proof of the intent element of desertion a matter of the highest practical importance.

The intent to remain absent permanently is the most typical basis for a desertion charge. This intent cannot be inferred merely from the length of the absence: a person who is absent for several months may have been absent through involuntary circumstances rather than through an intention to remain away permanently. Conversely, a person absent for a very brief period may have intended to remain away permanently but was apprehended before the intention could be fully executed.

The Air Force Act, consistent with the tradition of British military law from which it derives, treats the proof of intent to desert as a factual question to be determined by the court martial on the totality of the evidence. Relevant evidence includes the circumstances of the departure, statements made by the accused before or during the absence, the accused's conduct during the period of absence, and the circumstances of the return or apprehension. In practice, courts martial have developed a rough presumption that an absence of a certain duration gives rise to an inference of intention to remain away permanently, an inference that the accused may rebut by evidence of involuntary or excusable circumstances.

67.2 The Question of Constructive Desertion

A significant interpretive question in desertion law is whether the physical element of the offence requires an actual departure from the service or whether it can be satisfied by a constructive abandonment of duty, a refusal to perform one's role while remaining physically present in the service. The traditional view is that desertion requires actual absence, a physical departure from the place of duty. But there are cases in which a military person who remains physically present at a base or unit has effectively abandoned their military duty by refusing to perform their functions, comply with orders, or acknowledge the authority of command.

In such cases, the appropriate charge is typically not desertion but disobedience of orders or conduct prejudicial to good order and military discipline. But the boundary between constructive abandonment and formal disobedience is not always clear in practice.

67.3 Absence Without Leave: The Most Frequently Charged Offence

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Absence without leave is consistently the most frequently charged offence in military justice systems across all comparable jurisdictions. Research from the United States, which has the most comprehensive publicly available military justice statistics, confirms that AWOL charges represent the largest single category of offence prosecuted in courts martial, with a significant proportion of these cases arising from circumstances of genuine personal difficulty, family emergency, or mental health crisis rather than deliberate misconduct.

This empirical reality has important implications for the way in which the Bangladesh Air Force should approach the investigation and prosecution of absence without leave. The Air Force Act, like its counterparts in other jurisdictions, provides a range of responses to unauthorised absence, from the mildest summary action to the full court martial process. The appropriate response in any individual case depends on the circumstances of the absence, including its duration, the context in which it occurred, the personal circumstances of the absent person, and the impact on the unit and the service.

The proportionality principle in sentencing requires that the punishment for absence without leave reflect the actual gravity of the specific act of absence rather than the maximum possible consequences of the offence class. A brief absence motivated by genuine family emergency, by mental health crisis, or by confusion about the status of authorised leave is qualitatively different from a prolonged deliberate absence, and the institutional response should reflect that difference.

The treatment of mental health conditions as a relevant circumstance in AWOL cases is an area where Bangladesh Air Force law needs to develop more sophisticated guidance. Research consistently demonstrates that military personnel with post-traumatic stress disorder, depression, and anxiety are at elevated risk of unauthorised absence from duty, as the demands and stresses of service become unmanageable without adequate mental health support. Treating such absences as straightforward disciplinary matters without regard for the mental health context is both unjust and counterproductive: it compounds the distress of personnel who are already struggling and fails to address the underlying conditions that are generating the disciplinary problem.

67.4 The Historical Weight of Desertion as Offence

The historical treatment of desertion in military law, and the social and cultural attitudes to deserters that have prevailed across different military traditions, provide important context for understanding the contemporary legal framework. In the armies of ancient Rome, desertion was punishable by death, and the practice of decimation, the execution of one soldier in ten from a unit that had deserted or shown cowardice, reflected the extreme importance attached to the prevention of mass desertion. In medieval Europe, desertion was commonly punished by branding, mutilation, or death, reflecting the view that the deserter had violated not merely a contractual obligation but a sacred duty of loyalty.

The British military law tradition from which the Bangladesh Air Force Act derives maintained the death penalty for desertion in time of active service through much of its history, and executions for desertion occurred during both World Wars. The experience of these executions, particularly the well-documented executions of soldiers suffering from what would now be

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recognised as post-traumatic stress disorder, has been a significant driver of reform in military justice systems in the United Kingdom and elsewhere. The UK Parliament's posthumous pardon of approximately 300 soldiers executed for cowardice and desertion in World War One, granted in 2006, represents a formal recognition of the inadequacy of the legal framework under which those men were convicted and executed.

The Bangladesh Air Force Act, consistent with the contemporary international trend, does not mandate the death penalty for desertion in peacetime, and the conditions under which capital punishment can be imposed for wartime offences are narrowly defined. This reflects the progressive narrowing of the circumstances in which military law authorises the taking of life as a punishment, a trend that is consistent with both international human rights standards and the evolving moral consensus of democratic societies about the limits of state punishment.

67.5 Desertion in the Context of the Liberation War: The Special Case of 1971

The Bangladesh liberation war of 1971 created a unique and historically unrepeatable situation in relation to desertion law. Bengali officers and airmen of the Pakistan Air Force who abandoned their posts and joined the liberation movement were, from the perspective of Pakistani military law, guilty of the gravest forms of desertion and treason. From the perspective of the emerging Bangladesh, they were patriots performing a duty of the highest moral order. This paradox of legal status, discussed in Part One of this handbook, has direct consequences for the interpretation and application of Bangladesh Air Force law in the post-independence period.

The liberation war experience creates a specific jurisprudential challenge: how should Bangladesh Air Force law treat the concept of military loyalty and the obligation of obedience in light of an institutional founding experience in which disobedience to military authority was not merely morally justified but constitutive of national identity? The Air Force Act, inherited from the Pakistan period, does not address this question directly. The challenge for contemporary military law in Bangladesh is to interpret the Act's provisions on desertion, insubordination, and related offences in a manner that is consistent with both the letter of the law and the moral and historical experience of the institution.

CHAPTER SIXTY-EIGHT: INSUBORDINATION, DISOBEDIENCE, AND THE PHILOSOPHY OF LAWFUL ORDERS

68.1 The Duty of Obedience and Its Constitutional Foundations

The duty to obey lawful orders is the most fundamental obligation of military service. It is the thread upon which the entire fabric of military organisation depends. Without reliable obedience to orders, military units cannot coordinate their actions, cannot execute complex operations, cannot maintain the discipline that keeps individuals safe in conditions of extreme danger, and cannot achieve the operational objectives for which they exist. This much is universally acknowledged.

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But the duty of obedience, however fundamental, is not absolute. This is the crucial qualification that distinguishes contemporary military law from the conception of military authority that prevailed in earlier eras. The duty of obedience is a duty to obey lawful orders. An order that is unlawful does not create an obligation of obedience, and compliance with an unlawful order may itself constitute a criminal offence. The Nuremberg principle, confirmed in international law and incorporated into the military justice frameworks of democratic states, establishes that the fact that a person acted pursuant to orders does not relieve that person of criminal responsibility for acts that violate international law.

The practical difficulty is that the line between a lawful order and an unlawful one is not always easy to draw, particularly in the pressure of military operations where decisions must be made quickly and the full legal implications of an order cannot always be assessed with the care that deliberate legal analysis would allow. Military law must navigate between two equally serious dangers: the danger of a system so deferential to command authority that no order, however egregious, is ever disobeyed, and the danger of a system so permissive of individual moral judgment that coordinated military action becomes impossible because every soldier is constantly evaluating the legality and morality of every order before deciding whether to comply.

68.2 The Lawfulness of Orders: Tests and Principles

The test for the lawfulness of a military order that has gained the most consistent acceptance in comparative military law is the manifest illegality standard. Under this standard, an order is unlawful if its illegality is so apparent and obvious that any reasonable military person would recognise it as such without the need for careful legal analysis. Orders to commit murder, to torture prisoners, to commit sexual violence against civilians, to destroy protected property: these are manifestly unlawful orders, and compliance with them cannot be excused by the fact that they came from a superior authority.

Orders that are in a grey area, orders that might or might not be lawful depending on facts and circumstances that the individual soldier does not have access to, are presumed to be lawful. The legal adviser's 2025 assessment in the United States context notes that all orders are presumed lawful, and that this presumption exists so that military members can carry out their duties without being required to act as untrained constitutional scholars evaluating the legality of every order. This presumption is not irrebuttable: it can be displaced by evidence that the order is manifestly unlawful. But the burden of establishing manifest illegality rests on the party claiming it, and it is a demanding burden.

The application of the manifest illegality standard in the Bangladesh Air Force context raises specific challenges given the institution's history. The events of 1971 tested the limits of military obedience in ways that make the abstract standard concrete. Officers who refused to participate in the Pakistani military's operations against the Bengali civilian population, and who joined the liberation movement, were acting on a judgment that the orders they were given were manifestly unlawful. The moral and legal vindication of that judgment, embodied in the independent existence of Bangladesh and the recognition of the liberation war veterans as heroes, does not change the fact that the legal framework through which they were judged at the time condemned their conduct as the most serious military crime.

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68.3 Disobedience to Lawful Orders: Elements of the Offence

The offence of disobedience to a lawful order under the Air Force Act requires proof of three elements: that a lawful order was given, that the accused knew of the order, and that the accused disobeyed or failed to comply with the order without lawful excuse. Each of these elements raises specific interpretive questions.

The requirement that the order be lawful is discussed above. The requirement that the accused knew of the order is straightforwardly an issue of fact in most cases, but it raises specific questions in the context of orders communicated through intermediaries, orders published in standing operating procedures or orders of the day, and orders that the accused claims not to have received or understood. The requirement that the disobedience be without lawful excuse encompasses the general defences of military law, including compliance with a lawful superior order that conflicted with the disobeyed order, genuine incapacity to comply, and the circumstances of emergency that might justify deviation from a standing order.

68.4 Insubordination and Disrespect: The Relational Dimension

Insubordination in military law covers not only the specific act of refusing or failing to comply with an order but also a broader category of conduct that manifests disrespect for or challenges the authority of a superior officer. This broader category includes contemptuous or insolent behaviour toward a superior, challenges to the superior's authority in the presence of subordinates, and conduct that undermines the superior's authority within the unit.

The offence of insubordination in this broader sense raises important questions about the relationship between military discipline and personal dignity. The requirement of respect for superior authority is not merely a rule about compliance with orders. It encompasses a requirement of a certain manner of relating to persons of higher rank that goes beyond what civilian employment law would recognise. In civilian organisations, employees are expected to comply with lawful instructions but are not required to express personal respect for their supervisor's authority or to maintain a particular manner of deference.

The military law requirement of respect for superior authority has historical roots in an era when the social distance between officers and other ranks was vast and reinforced by class structures that no longer exist in the same form. Contemporary military organisations in democratic states have largely moved away from the most extreme expressions of hierarchical deference, recognising that genuine respect for authority is earned rather than commanded and that mechanical deference does not produce the genuine commitment and initiative that modern military operations require.

The Bangladesh Air Force Act's provisions on insubordination and disrespect, inherited from the colonial British military law tradition, are products of an era in which the hierarchical model of military authority was more extreme than it is today. Their interpretation and application in contemporary Bangladesh should reflect the evolution of understanding about what forms of deference military discipline genuinely requires and what forms represent the survival of colonial-era social attitudes that have no place in a democratic military institution.

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68.5 Collective Expressions of Grievance and Their Legal Status

One of the most difficult areas of insubordination and disobedience law in the military context is the treatment of collective expressions of grievance by military personnel. When a group of officers or airmen collectively represent a complaint to command, whether through a formal petition, a joint representation, or some other form of collective action, the legal status of that conduct depends critically on its form and manner.

The Air Force Act, like other military law codes, provides formal channels for the expression of individual grievance: the right of a member to represent a complaint through the chain of command, and the obligation of superior officers to consider such representations fairly. But the Act is less clearly articulated on the question of collective representations. The traditional military law view is that collective representations, made simultaneously by a number of personnel, are presumptively suspicious because they resemble the collective action element of mutiny. But this traditional suspicion is in tension with the constitutional guarantee of freedom of association and the recognised right of military personnel to raise concerns about their conditions of service.

The development of clearer guidance on the distinction between legitimate collective representations and unlawful collective action is an important element of the reform agenda for Bangladesh Air Force law. Such guidance should affirm the right of service personnel to raise collective concerns through appropriate channels while clearly identifying the forms of collective action that cross the line into conduct that undermines military discipline.

CHAPTER SIXTY-NINE: OFFENCES IN RELATION TO THE ENEMY: THE LAW OF MILITARY CONDUCT IN COMBAT

69.1 Misbehaviour Before the Enemy: Historical Context and Contemporary Application

The offence of misbehaviour before the enemy is among the oldest and most historically charged in military criminal law. It addresses the conduct of military personnel in the most extreme and defining circumstances of their existence: combat with an enemy. The offences in this category include cowardice in the face of the enemy, abandonment of a post, shamefully casting away weapons or ammunition, and similar conduct that deprives the military of the effective fighting capacity that its personnel are trained and equipped to provide.

These offences were central to military criminal law in an era when battles were fought by large formations of troops who depended absolutely on each other's willingness to hold their positions under fire. The collapse of a single unit in the face of enemy attack could have catastrophic consequences for the entire formation, and the threat of severe punishment for cowardice and misbehaviour before the enemy was understood as a necessary supplement to training, leadership, and unit cohesion in maintaining fighting effectiveness.

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The application of these historical offences to the specific character of contemporary air force operations requires careful attention. Air force combat operations are conducted primarily through individual or small-team action by highly trained specialist personnel in a technological environment where individual initiative and professional judgment are as important as collective obedience. The paradigm of the ground soldier holding a position under infantry assault, which underlies the historical conception of cowardice before the enemy, does not map straightforwardly onto the situation of an air force pilot, a maintenance technician, an air traffic controller, or an intelligence analyst.

69.2 Cowardice: The Most Contested Military Offence

Cowardice before the enemy is the most morally and philosophically contested offence in military criminal law. It is the offence that most directly engages questions about the nature of courage, the limits of human psychological endurance, and the justice of punishing persons for conduct that may reflect genuine psychological incapacity rather than moral failing.

The traditional view of cowardice in military law treats it as a choice: the coward is a person who, faced with the dangers of combat, chooses self-preservation over duty, choosing to run or surrender rather than to stand and fight. This choice-based understanding makes cowardice a moral failing for which criminal punishment is appropriate.

The modern psychological understanding of cowardice, informed by decades of research into combat stress, post-traumatic stress disorder, and the psychological effects of extreme fear, is significantly more complex. Fear is not a choice. The physiological and psychological responses to extreme danger, including the activation of the fear response, the impairment of rational decision-making, and the powerful drive toward self-preservation, are largely involuntary processes that even the best-trained and most motivated individuals cannot fully control. The person who breaks under extreme stress and runs from combat may be doing so not as a matter of moral choice but as a consequence of psychological processes that overwhelmed their will.

The recognition of this complexity has produced significant reform in the treatment of combat-related psychological incapacity in military law. The posthumous pardons granted by the UK Parliament to World War One soldiers executed for cowardice and desertion reflected the recognition that these men were victims of combat stress that was beyond their psychological capacity to manage rather than moral cowards who deserved to die. The development of the legal concept of combat stress reaction in military medicine and its recognition as a factor relevant to criminal responsibility in military law proceedings has been an important development in military jurisprudence.

The Bangladesh Air Force Act, reflecting its 1953 origins, does not address the relationship between combat stress, psychological incapacity, and the cowardice offence in any systematic way. The reform of the Act to address this relationship, drawing on the substantial body of research and jurisprudence that has developed since the Act was drafted, is an important element of the modernisation agenda.

69.3 Aiding the Enemy: Treachery and Its Extremes

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The offence of aiding the enemy is among the most grave in military criminal law. It covers a range of conduct from providing direct military assistance to enemy forces, through the communication of information useful to the enemy, to assistance with the escape or evasion of enemy prisoners. The gravity of the offence reflects the potentially catastrophic consequences of such conduct for the safety of military personnel and the success of military operations.

The element of the offence that has attracted the most intensive contemporary attention is the communication of information to the enemy, because in the contemporary information environment, information can be communicated through a vast range of channels, including digital communications, social media, and international broadcasting. The question of what constitutes information useful to the enemy, whether providing it was done knowingly, and whether the accused had the requisite intent to aid the enemy rather than, for example, to expose wrongdoing to the public or press, are questions that have been the subject of significant litigation in comparable military justice systems.

The December 2024 amendment to the UCMJ's aiding the enemy provisions, which inserted the words "provides military education, military training, or tactical advice to" into the provision, reflects the evolving understanding of what constitutes aiding the enemy in the contemporary context, where training and knowledge transfer may be as strategically significant as material assistance. This amendment, specifically enacted in the National Defense Authorization Act for Fiscal Year 2025 (Public Law 118-159), signals the ongoing evolution of the aiding the enemy offence in response to the specific character of contemporary conflict.

The Bangladesh Air Force Act's provisions on aiding the enemy should be interpreted in light of these contemporary developments, even though the specific provisions of the Act reflect an earlier and more limited conception of what aiding the enemy entails. The interpretation of "information useful to the enemy" in the context of digital communications, the development of specific guidance on whistleblowing and its relationship to the aiding the enemy offence, and the clarification of the mental element required for conviction, are all important areas for interpretive and legislative development.

69.4 Spiriting Away Persons Subject to the Act

The offence of seducing persons subject to the Air Force Act from their duty or allegiance, or spiriting away or otherwise inducing persons to desert, reflects the military law concern with the integrity of the service's personnel base and the vulnerability of that base to external subversion. This offence can be committed by persons who are not themselves subject to the Act, and it extends military criminal jurisdiction to civilians and others who take active steps to undermine military discipline and loyalty.

The application of this offence in the contemporary context raises questions about the boundaries of legitimate political expression and advocacy in relation to military service. Those who argue publicly, through legal means, that military service is unjust, that specific military operations are illegal, or that military personnel should refuse to participate in particular activities, are engaged in expression that may be protected by constitutional guarantees of freedom of expression. The line between protected expression and the criminal seduction of persons from their military duty

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is one that requires careful doctrinal development to ensure that the offence does not become an instrument for suppressing legitimate political discourse.

CHAPTER SEVENTY: OFFENCES RELATING TO AIR FORCE PROPERTY AND EQUIPMENT

70.1 The Special Significance of Aircraft and Aviation Assets

The Bangladesh Air Force's core operational capability resides in its aircraft, the extraordinarily expensive, technically complex, and operationally indispensable machines that define what an air force is and does. The loss, damage, or destruction of military aircraft, whether through enemy action, accident, negligence, or deliberate misconduct, has consequences that are fundamentally different from the loss of equivalent financial value in ordinary property. An aircraft is not merely a financial asset. It represents months or years of training for its crew, irreplaceable operational capacity that cannot be immediately substituted, and in some cases the product of strategic procurement processes that took years to complete.

The Air Force Act reflects this special significance by creating specific offences relating to the loss, destruction, or damage of aircraft and related equipment. These provisions go beyond the general offences of damage to public property that civilian law provides. They reflect the military recognition that negligence in relation to aircraft and aviation assets is not merely a form of carelessness but a threat to operational capability, unit safety, and national security.

The January 2024 B-1B Lancer crash at Ellsworth Air Force Base in South Dakota, whose accident report attributed the crash in part to an unhealthy organisational culture that permitted degradation of airmanship skills, illustrates the systemic dimension of aircraft safety failures. When aircraft are lost or damaged as a result of systemic failures in training, standards, and professional culture, the appropriate legal and institutional response is not simply the punishment of individuals but the examination and correction of the systemic conditions that allowed the failure to occur.

Air Force Chief of Staff General David Allvin's January 2025 call for renewed emphasis on safety standards and uniform enforcement of regulations, explicitly linking non-compliance with regulations to injury and death of airmen, reflects a command-level recognition of the systemic dimension of aviation safety that has direct implications for the interpretation and application of the Air Force Act's property and equipment offences.

70.2 Negligent Loss or Damage to Public Property

The Air Force Act creates offences for the negligent loss, destruction, or damage of public property entrusted to or under the care of a person subject to the Act. The application of this offence provision to the wide range of property that air force personnel handle in the course of their duties, from expensive aircraft and sophisticated electronic systems to basic equipment and personal issue kit, requires careful attention to the specific elements of the offence.

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The negligence element of this offence requires proof that the accused failed to exercise the standard of care that a reasonable person in their position and with their training and responsibilities would have exercised. This is an objective standard: it does not require proof that the accused subjectively recognised the risk of damage and chose to disregard it. It requires proof that the accused fell below the standard of a reasonable person in the relevant situation.

The application of the negligence standard in the aviation context is particularly demanding because the consequences of sub-standard performance are so potentially severe. An aircraft maintenance technician who fails to follow the technical order procedures for a particular maintenance task, and whose failure contributes to an accident that destroys an aircraft, may be guilty of negligent damage to public property even if they did not subjectively appreciate that their departure from the prescribed procedure created a risk. The technical orders and standard operating procedures of the air force define the standard of reasonable care in the aviation context, and departure from those procedures without adequate justification is presumptively negligent.

This strict approach to negligence in the aviation context serves the important safety function of maintaining the highest standards of technical procedure. But it must be applied with sensitivity to the circumstances in which deviations from procedure occur. When a departure from technical procedure is necessitated by emergency circumstances, by the unavailability of prescribed materials or equipment, or by the application of equivalent alternative procedures approved by technical authority, the departure is not necessarily negligent in the legal sense. The application of the negligence standard must take account of the full range of circumstances in which the accused was operating.

70.3 Misapplication and Waste of Public Property

Distinct from the negligent loss or damage of property is the intentional or reckless misapplication of public property, the use of air force property for unauthorised purposes, the waste of resources through extravagance or carelessness in expenditure, or the application of property to personal use without authorisation. These offences reflect the military law concern with the stewardship of public resources, the recognition that air force property and resources are entrusted to military personnel in trust for the state and the public, and the obligation of honest and diligent stewardship that attaches to that trust.

The misapplication of public property offences have significant connections to the broader body of Bangladesh public law relating to the accountability of public officials for the management of public resources. The constitutional and statutory framework of public finance management in Bangladesh imposes obligations on public servants, including military personnel, in relation to the management of public funds and property. The Air Force Act's specific offences in this area supplement the general public law framework with provisions specifically adapted to the military context.

70.4 Interference with Air Signals and Communication Equipment

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The provision in the Air Force Act that makes it an offence to alter or interfere without due authority with any air signal reflects the particular danger of unauthorised interference with the communication and navigation systems on which air operations depend. In the contemporary air force environment, where digital communication systems, satellite navigation, radar installations, and a vast array of electronic systems provide the information infrastructure on which all air operations rely, the potential for interference with these systems to cause catastrophic accidents is enormous.

The development of specific legal provisions addressing deliberate or negligent interference with air communication and navigation systems, updated to reflect the character of contemporary digital systems rather than the analogue systems that the 1953 Act contemplated, is an important element of the modernisation of Bangladesh Air Force law. The expansion of this area of the law to address cyber threats to air force communication systems, including hacking, malware, and other forms of digital interference, is an urgent priority as the threat environment in this domain evolves rapidly.

CHAPTER SEVENTY-ONE: AVIATION-SPECIFIC OFFENCES: THE UNIQUE LEGAL DIMENSIONS OF AIR FORCE SERVICE

71.1 The Distinctiveness of Aviation Law Within Military Law

Air force law is distinguished from the law of other military services by the specific legal issues raised by aviation: the operation of aircraft, the maintenance and technical management of aviation systems, the unique safety requirements of flight operations, and the specific duties and responsibilities that attach to those whose professional work involves the operation, maintenance, and control of aircraft. These aviation-specific dimensions of air force law are areas where the Bangladesh Air Force Act requires the most intensive interpretive and modernising attention, because the aviation technology environment has changed so dramatically since 1953 that many of the Act's specific provisions address a world that no longer exists in the same form.

The general legal framework for aviation safety, both civilian and military, has developed enormously since 1953. The Chicago Convention on International Civil Aviation and the standards developed by the International Civil Aviation Organisation provide a comprehensive framework for civilian aviation safety. Military aviation, while not directly subject to ICAO standards in the same way that civilian aviation is, draws extensively on the ICAO framework and has developed its own detailed standards for flight operations, aircraft maintenance, airworthiness certification, and crew training and qualification.

71.2 Offences by Aircrew: Neglect and Incompetence in Flight Operations

The Air Force Act creates specific offences for aircrew who, through negligence, incompetence, or deliberate misconduct, endanger the safety of aircraft or the lives of those on board. These offences reflect the special position of aircrew as the human interface between the extraordinary

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capabilities of military aircraft and the missions those aircraft are designed to perform. The aircrew member who fails to maintain the standards of airmanship, professionalism, and technical competence that safe flight operations require, or who engages in deliberate misconduct that endangers the aircraft or its passengers, commits an offence of a character different from ordinary negligence because of the potentially catastrophic consequences of aviation failures.

The January 2025 emphasis on standards by the United States Air Force Chief of Staff, noting that non-compliance with technical orders and safety regulations can lead to injury and death of airmen and destruction of equipment, underscores the importance of the legal framework for holding aircrew accountable for standards failures. But the legal framework must be applied with nuance. The culture of aviation safety, developed over decades in both civilian and military aviation, recognises that the most effective way to improve safety is not primarily through punitive action against individuals who have made errors, but through the systematic investigation of errors to identify systemic causes and to develop systemic corrections.

The tension between the punitive and the systemic approaches to aviation safety is one that military aviation law must manage carefully. The threat of criminal prosecution for honest errors made in the course of conscientious professional performance may discourage aviation personnel from reporting errors and near-misses, depriving the safety system of the information it needs to identify and correct systemic problems. The development of non-punitive safety reporting systems, which allow honest reports of errors and near-misses to be made without fear of criminal prosecution, while preserving the ability to prosecute deliberate or grossly negligent conduct, is a critical element of a modern military aviation safety framework.

71.3 Ground Crew Negligence and Aircraft Maintenance Standards

The maintenance of military aircraft is as important to aviation safety as the competence of aircrew. A poorly maintained aircraft is a danger to its crew, to others in the airspace, and to anyone on the ground in the event of a failure. The Air Force Act's provisions on negligence in relation to aircraft and equipment extend to those responsible for aircraft maintenance, and the interpretation and application of these provisions must reflect the specific technical and professional standards of aircraft maintenance work.

The technical orders, maintenance manuals, and standard operating procedures that govern aircraft maintenance work in the Bangladesh Air Force define the standard of care that maintenance personnel are required to meet. Departure from these procedures without authorisation and without equivalent substitute procedures is presumptively negligent. But the application of the negligence standard to maintenance personnel must take account of the conditions under which maintenance work is performed, including time pressure, resource constraints, inadequate tooling, insufficient training, and the organisational pressures that may encourage shortcuts.

The systemic dimension of maintenance negligence is particularly important. When a series of accidents or incidents reveals a pattern of similar errors across different units and personnel, the appropriate institutional response is not the sequential prosecution of individuals but the

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systematic examination of the conditions that are producing the errors and the correction of those conditions. The Air Force Act's offence provisions are tools for addressing individual misconduct, not instruments for managing systemic safety failures.

71.4 Drones and Unmanned Aerial Vehicles: A New Legal Frontier

The rapid development and deployment of unmanned aerial vehicles, drones, in military operations creates a new legal frontier for air force law that the Bangladesh Air Force Act of 1953 was not designed to address. Military drones range from small tactical reconnaissance platforms to large strategic strike aircraft, and the legal issues they raise are correspondingly varied.

The specific legal questions raised by military drone operations include the following. Who is the "aircrew" of a drone for the purposes of the offences relating to the operation of aircraft? The operator of a drone is typically physically remote from the aircraft itself, often at a ground station that may be located thousands of kilometres from where the drone is operating. The attribution of legal responsibility for the safe operation of the drone, and for any accidents or incidents that occur in the course of its operation, requires the development of specific legal frameworks that the existing Act does not provide.

The question of accountability for drone accidents and incidents is particularly complex because the causes of drone malfunctions and accidents may be distributed across a wide range of human actors: the operator who controls the drone in real time, the mission planner who designed the operation, the maintenance personnel who serviced the drone, the software engineers who programmed its flight systems, and the commanders who authorised the operation. Identifying and attributing legal responsibility among these actors in the event of a serious incident requires a more sophisticated framework than the Air Force Act's current provisions can provide.

The Bangladesh Air Force has been expanding its unmanned aerial vehicle capabilities as part of the modernisation programme known as Forces Goal 2030. The legal framework for the operation, maintenance, and accident investigation of these systems requires urgent attention in light of this expansion.

CHAPTER SEVENTY-TWO: CONDUCT UNBECOMING AN OFFICER: THE BROADEST AND MOST PHILOSOPHICALLY CONTESTED OFFENCE

72.1 The Nature and Scope of Conduct Unbecoming

The offence of conduct unbecoming an officer, which is created by the Bangladesh Air Force Act in terms that are substantially similar to corresponding provisions in the military law codes of other Commonwealth and common law jurisdictions, is at once the broadest, the most flexible, and the most philosophically contested offence in military criminal law. It is broad because it applies to any conduct that, in the words of the standard formulation, dishonours or disgraces the person as an officer or seriously compromises the officer's character as an officer. It is flexible

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because it does not enumerate specific types of conduct but instead applies a general standard of officer-hood to whatever conduct is charged. And it is contested because the standard it applies is inherently vague and potentially over-inclusive, raising concerns about notice, the rule of law, and the constitutional guarantee against vague penal provisions.

The offence traces its origins to the British military law tradition and the concept of the officer as a gentleman, a social role that carried specific moral and behavioural obligations that extended far beyond the purely operational. The traditional formulation of the offence referred to conduct unbecoming an officer and a gentleman, language that was amended in the United States context in 2021 to read simply conduct unbecoming an officer, reflecting the recognition that the gendered language of the traditional formulation was inappropriate in a military that includes women officers and that the social concept of gentleman is no longer the relevant standard.

72.2 The Constitutional Vagueness Challenge

The most serious legal challenge to the conduct unbecoming offence is the constitutional vagueness challenge: the argument that the offence is so vaguely defined as to fail the constitutional requirement that penal provisions give clear notice of the conduct they prohibit. A person charged with conduct unbecoming cannot know in advance with any precision what conduct the offence covers. The standard is the vague one of conduct that dishonours or disgraces the officer as an officer, a standard that can encompass an almost unlimited range of behaviour depending on how broadly or narrowly the court martial chooses to read it.

The constitutional vagueness challenge to conduct unbecoming has been litigated in the United States in the context of the UCMJ's equivalent provision, Article 133. The Court of Appeals for the Armed Forces has addressed this challenge by holding that the standard of what a reasonable military officer would regard as conduct unbecoming provides sufficient notice to satisfy the constitutional vagueness requirement, because officers are expected to have internalised through their professional formation a sense of what the standard demands. This resolution of the vagueness challenge is problematic because it essentially means that the standard is whatever the military culture says it is, which leaves it vulnerable to the prejudices and biases of that culture.

The specific test for conduct unbecoming, whether a "reasonable military officer would have no doubt that the activities charged constituted conduct unbecoming an officer," is a test that depends heavily on the composition and assumptions of the relevant military community. In a military institution that has certain assumptions about the social behaviour, personal conduct, or political opinions of officers, those assumptions will be reflected in the reasonable officer standard. This creates the risk that the conduct unbecoming offence will be used to enforce conformity with institutional norms that go beyond what professional military standards legitimately require.

72.3 Conduct Unbecoming in the Social Media Age

The application of conduct unbecoming to social media behaviour is one of the most actively debated issues in contemporary military law. The pervasiveness of social media in the lives of military personnel, including officers, means that behaviour that would formerly have remained

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private or at most confined to a small circle of observers is now potentially visible to the entire world. Photographs, videos, posts, and comments shared on social media can expose aspects of an officer's personal life, social behaviour, and political opinions that were previously not subject to institutional scrutiny.

The 2025 commentary in the United States context explicitly identifies Article 133 as a potential vehicle for prosecuting officers whose social media activity is seen as dishonourable or disgraceful, including posts, videos, or tweets that express certain political opinions or celebrate certain events. This development raises serious concerns about the use of the conduct unbecoming offence as a tool for disciplining political expression rather than genuine professional misconduct.

The constitutional guarantee of freedom of expression in Article 39 of the Constitution of Bangladesh creates limits on the extent to which the military institution can use the conduct unbecoming offence, or any other provision of the Air Force Act, to suppress the political expression of its officers. While military personnel are subject to restrictions on political activity and expression that go beyond what applies to civilians, those restrictions must be proportionate to the genuine requirements of military discipline and not extend to the suppression of all expression that the institution finds inconvenient or embarrassing.

72.4 Private Conduct and the Officer's Duty of Personal Character

The conduct unbecoming offence extends, at least potentially, to the private conduct of officers in their personal lives, not merely to their professional conduct in the service. An officer who commits acts of dishonesty, who behaves in a manner grossly inconsistent with the values of integrity, dignity, and responsibility that the officer's commission represents, or who engages in personal conduct that brings the service into disrepute, may be guilty of conduct unbecoming even if the conduct occurs entirely outside the scope of their official duties.

This extension of criminal liability to private conduct is one of the most distinctive and philosophically contentious aspects of the military officer's legal status. It represents a significant departure from the ordinary principle that criminal law governs conduct in the social sphere and does not penetrate the private sphere of individual life. The justification for this departure is the understanding that the officer's role as a leader, a representative of the institution, and a model for those under command extends to the whole of the officer's life and not merely to the hours of official duty.

This justification has force, but it does not justify an unlimited intrusion of military law into every aspect of the officer's private life. The proportionality principle requires that the conduct unbecoming offence be confined to private conduct that genuinely and substantially compromises the officer's ability to perform their professional role, to maintain the confidence of those under command, or to represent the institution with honour. It should not be extended to private conduct that is merely socially unconventional, personally eccentric, or inconsistent with the social conventions of particular sections of the military community.

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CHAPTER SEVENTY-THREE: CIVIL OFFENCES AND THE QUESTION OF CONCURRENT JURISDICTION

73.1 The Civil Offences Provision: Scope and Philosophy

The Bangladesh Air Force Act provides that a person subject to the Act who commits a civil offence, an offence triable by a criminal court, shall be liable to be tried by court martial and on conviction to be sentenced to any punishment prescribed by the Act, subject to certain conditions and exceptions. This provision, which is common to military law codes derived from the British tradition, extends the jurisdiction of military courts to cover the entire range of ordinary criminal offences, creating a potential concurrent jurisdiction between military courts martial and ordinary civilian criminal courts.

The civil offences provision raises the most fundamental questions about the relationship between military justice and the ordinary criminal justice system. Why should a military person who commits murder, rape, robbery, or fraud be tried by a court martial rather than by an ordinary criminal court? The military law answer traditionally given is that the military has an institutional interest in the discipline and good order of its members that extends to their conduct in all circumstances, on duty and off duty, in service and in private life, and that this institutional interest justifies the exercise of military jurisdiction over all offences committed by service personnel.

This justification has been increasingly questioned in recent years. The Solorio v. United States decision of the United States Supreme Court in 1987, which held that the UCMJ's jurisdiction extends to all offences by service members without requiring a connection to military service, reflected the broad view of military jurisdiction. But subsequent reform proposals in the United States and elsewhere have questioned whether this broad jurisdiction is appropriate, with scholars and reformers arguing that military courts should exercise jurisdiction only over offences that have a direct and substantial connection to military service and that purely civilian offences should be tried in civilian courts.

73.2 Murder, Rape, and Other Serious Civil Offences in the Military Context

The special cases of murder and rape, and other serious civil offences committed by military personnel, deserve particular attention. The Bangladesh Air Force Act, following the model of corresponding provisions in Indian military law, provides that certain serious offences against persons not subject to the Act, including murder, culpable homicide not amounting to murder, and rape, shall not be triable by court martial unless committed in particular operational circumstances.

This limitation on military jurisdiction over serious offences against civilians reflects the recognition that the most serious crimes against civilians should be tried in the civilian courts, before civilian judges, and subject to the full protections of the ordinary criminal process. This is consistent with the emerging international consensus, expressed in the Decaux Principles and in the jurisprudence of the Human Rights Committee, that military courts should exercise

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jurisdiction only over offences that have a direct military dimension and that civilians, in particular, should not be tried by military courts.

The application of this principle in the Bangladesh context is complicated by the history of military involvement in civilian affairs and by the specific provisions of martial law orders and emergency legislation that have at various times extended military jurisdiction beyond its ordinary scope. The normalisation of military jurisdiction, restricting it to genuinely military offences and to military personnel, is an important element of the constitutional governance reforms that Bangladesh needs.

73.3 Deciding the Forum: When Civil Courts Are Preferred

The decision whether a civil offence committed by a military person should be tried by court martial or by an ordinary criminal court is a discretionary decision that, under the Air Force Act, lies primarily with the convening authority. This discretion is an important and potentially problematic aspect of the civil offences framework.

The factors that should guide the exercise of this discretion include the nature and seriousness of the offence, the nexus between the offence and military service, the availability and adequacy of military justice procedures for trying the specific offence, the interests of any civilian victims, and the public interest in the trial being conducted by the most appropriate forum. In general, serious offences against civilians should be tried in civilian courts unless there is a strong specific reason for military trial. Offences arising directly from military service and operation should be tried in military courts. Offences that fall in between require careful case-by-case assessment.

The development of more specific guidance on the exercise of forum discretion in civil offence cases, drawing on the emerging international consensus and the experience of comparable military justice systems, would improve the consistency and legitimacy of forum decisions in Bangladesh Air Force law.

73.4 The Problem of Double Jeopardy in Civil Offence Cases

The relationship between civil offence prosecution in courts martial and the double jeopardy guarantee in Article 35(2) of the Constitution is particularly complex in the context of the civil offences provision. A military person who has been tried and convicted or acquitted by a civilian criminal court for a civil offence faces the question of whether they can be subsequently tried by court martial for the same offence, and vice versa.

The traditional military law answer, consistent with the dual sovereignty doctrine that prevails in many common law systems, is that prosecution by a military court does not bar subsequent prosecution by a civilian court, and vice versa, because the two courts exercise the jurisdiction of what are treated as different sovereign authorities. But this answer is deeply unsatisfying. From the perspective of the accused, being tried twice for the same conduct, regardless of which courts exercise the jurisdiction, is a profound and manifestly unjust experience. The formal legal

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doctrine that the two prosecutions are by different sovereigns does not diminish the practical reality of double punishment.

The development of clear rules governing the relationship between military and civilian prosecutions for the same conduct, rules that give genuine practical effect to the spirit of the double jeopardy guarantee while preserving the legitimate institutional interests of both the military and the civilian justice systems, is an important reform priority.

CHAPTER SEVENTY-FOUR: FRAUDULENT ENROLMENT AND RELATED OFFENCES

74.1 Fraudulent Enrolment: The Integrity of the Recruitment Process

The Air Force Act creates specific offences relating to fraudulent enrolment, covering both the person who fraudulently enrolls in the service by making false statements or concealing disqualifying circumstances, and persons who assist in or facilitate such fraudulent enrolment. These offences reflect the importance of the integrity of the recruitment process as the foundation on which the service's personnel base is built.

The fraudulent enrolment offences raise specific interpretive questions about the nature and extent of the disclosure obligations that the enrolment process imposes. A person who, at the time of enrolment, fails to disclose a previous criminal conviction, a pre-existing medical condition, a false claimed qualification, or a concealed prior service in a foreign military, is potentially guilty of fraudulent enrolment. But the scope of the disclosure obligation depends on what questions are asked in the enrolment process and what information a reasonable recruiter would consider material to the enrolment decision.

The distinction between a deliberate misrepresentation and an innocent failure to disclose is particularly important in the fraudulent enrolment context. A person who actively states a false answer to a direct question at enrolment commits a more serious form of fraudulent enrolment than a person who simply fails to volunteer information that was not specifically asked for. The Air Force Act addresses this distinction by requiring proof of a wilfully false answer to a question put at enrolment, which suggests that the offence requires deliberate deception rather than mere omission.

74.2 The Significance of Service Records

The integrity of service records is of direct and practical importance to the administration of Bangladesh Air Force law. Service records document the entire career of a military person: their promotions and demotions, their training and qualifications, their postings and deployments, their disciplinary record, and their service history. These records are relied upon in courts martial proceedings, in administrative decisions about promotion and posting, and in the administration of benefits and entitlements both during and after service.

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The falsification or alteration of service records is an offence under the Air Force Act, and the specific provisions addressing this offence reflect the recognition that the integrity of these records is essential to the fair administration of the military justice system and of military careers generally. The extension of these offence provisions to the digital records environment, where records are maintained in computer systems that may be subject to unauthorised access and alteration, is an important area for legislative and regulatory development.

CHAPTER SEVENTY-FIVE: MISCELLANEOUS OFFENCES AND THE GENERAL PREJUDICE PROVISION

75.1 The General Article: Conduct to the Prejudice of Good Order and Military Discipline

The Air Force Act, like other military law codes derived from the British tradition, contains a residual offence provision that covers conduct to the prejudice of good order and military discipline that is not specifically covered by any other provision of the Act. This general article is one of the most important and most frequently applied provisions of military criminal law. It provides a flexible tool for the prosecution of conduct that the specific offence provisions do not address but that is genuinely prejudicial to the discipline and good order of the service.

The legitimacy and utility of the general prejudice provision has been extensively debated in military law scholarship and jurisprudence. Its defenders argue that the diversity and unpredictability of human conduct in the military context makes it impossible to anticipate and specifically prohibit every form of conduct that might genuinely prejudice military discipline, and that the general provision is therefore necessary to ensure that the military justice system can respond effectively to genuine misconduct. Its critics argue that the provision is unconstitutionally vague, that it gives too much discretion to military authorities to prosecute conduct of which they disapprove without adequate notice to the accused, and that it has historically been used to prosecute forms of conduct, including political expression, unconventional personal behaviour, and the assertion of legal rights, that do not genuinely prejudice military discipline.

These competing perspectives both have substance. The general prejudice provision is a necessary tool of military justice administration, and its complete abolition would create genuine gaps in the law. But its application requires careful constraints. The requirement that the conduct actually and genuinely prejudice the good order and discipline of the service, rather than merely offend institutional sensibilities or challenge command preferences, is a genuine constraint that courts martial must take seriously. The requirement that the specific conduct charged be clearly alleged in the charge and proved by the prosecution beyond a reasonable doubt, rather than assumed from the accused's general character or reputation, is another essential constraint.

75.2 The Sleeping Sentry and Intoxication on Duty

The Air Force Act specifically addresses a range of operational duty offences, including being asleep on post, being intoxicated on duty, and abandoning a guard or patrol post without orders.

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These offences reflect the specific operational safety concerns of military service: a sentry who falls asleep or who is intoxicated provides no protection against the threats the sentry post exists to guard against, and the failure of guard duty can have catastrophic operational consequences.

The interpretation of the sleeping on post offence raises interesting questions about the role of involuntary conduct in military criminal liability. A sentry who falls asleep inadvertently, without intending to sleep and without being negligent in failing to take precautions against involuntary sleep, occupies a different moral and legal position from one who deliberately takes a nap during guard duty. The distinction between inadvertent and deliberate sleep has been addressed in military law jurisprudence in comparable systems, with the general conclusion that inadvertent sleep that results from a condition beyond the accused's control may be a defence, while sleep that results from the accused's own negligence or from deliberate choice is not.

The intoxication on duty offence raises the specific question of how military law should treat alcoholism and alcohol dependence as a factor in duty-related misconduct. An officer or airman who is alcohol-dependent may become intoxicated during duty as a consequence of a condition that has significant involuntary elements, and the appropriate institutional response to duty-related intoxication arising from alcohol dependence may be as much a question of medical management and welfare intervention as criminal prosecution.

75.3 False Alarms and the Spreading of Alarm

The offence of intentionally or through neglect occasioning a false alarm in camp or quarters, or of spreading reports calculated to create unnecessary alarm or despondency, reflects the specific military concern with the management of information and psychological state in operational environments. False alarms can cause significant harm in military contexts: they can trigger defensive responses that waste resources and create confusion, they can cause accidental injuries as personnel respond to a perceived threat, and they can undermine the credibility of genuine alarm systems by conditioning personnel to disregard alerts.

The spreading of alarm or despondency is a more philosophically complex offence. Its application to the contemporary information environment, including social media, messaging applications, and online platforms, raises questions about the boundary between legitimate information sharing and the dissemination of content that undermines operational morale. The distinction between accurate information that happens to be alarming and false information that creates unnecessary alarm is an important one that the offence provision must respect.

75.4 Malingering: Feigning Illness and Evading Duty

Malingering, the deliberate feigning or exaggeration of illness, injury, or incapacity for the purpose of avoiding military duty, is an offence under the Air Force Act that raises some of the most difficult diagnostic and evidentiary questions in military justice. The challenge of distinguishing genuine illness from feigned illness, genuine psychological incapacity from deliberate avoidance of duty, and legitimate medical limitations from manipulative exaggeration, is one that requires the collaboration of military legal and medical expertise.

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The malingering offence is particularly sensitive in the contemporary context because of the widespread recognition that mental health conditions, including post-traumatic stress disorder, depression, and anxiety, can produce genuine incapacity that is difficult to distinguish from malingering in its external presentation. A service member who is genuinely suffering from PTSD or depression may present to medical authorities with complaints that appear to a suspicious observer as malingering: vague physical symptoms, reluctance to return to duty, and a clinical picture that is not obviously explicable in physiological terms.

The investigation and prosecution of malingering allegations requires extraordinary care to ensure that genuine mental health conditions are not mischaracterised as criminal malingering. The development of specific procedures for the medical assessment of malingering allegations, the involvement of independent psychiatric expertise, and the clear articulation of the standard of proof required for a malingering conviction, are important elements of a fair and accurate approach to this difficult offence category.

CHAPTER SEVENTY-SIX: SENTENCING PRINCIPLES FOR AIR FORCE ACT OFFENCES

76.1 The Purposes of Military Sentencing

Sentencing in military justice proceedings serves multiple purposes that are partly shared with civilian criminal sentencing and partly distinctive to the military context. The general purposes of criminal sentencing, deterrence, rehabilitation, denunciation, protection of the public, and proportionality to the gravity of the offence, are all relevant in the military sentencing context. But the military context adds specific purposes that are not equally significant in civilian sentencing: the maintenance of unit discipline and cohesion, the preservation of operational effectiveness, and the protection of the professional integrity and public reputation of the service.

The proportionality principle, which requires that the severity of the sentence be proportionate to the gravity of the offence and the culpability of the offender, is the foundational principle of sentencing in constitutional criminal justice systems. It is directly applicable to courts martial sentencing and is reflected in the maximum punishment provisions of the Air Force Act, which impose different maximum penalties for different categories of offence. But the proportionality principle does not merely require that the sentence not exceed the maximum. It requires active calibration of the sentence to the specific gravity of the offence in its specific circumstances.

76.2 The Range of Sentences Available

The Air Force Act prescribes a range of sentences that a court martial may impose on conviction. At the most severe end is the death penalty, reserved for the most extreme wartime offences including mutiny, cowardice before the enemy, and aiding the enemy in circumstances prescribed by the Act. Imprisonment, including both rigorous and simple imprisonment, covers a wide range of offences of varying gravity. Dismissal from the service, forfeiture of pay and allowances, reduction in rank, and severe reprimand are available for offences that do not

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warrant imprisonment. At the lower end of the scale, minor punishments including reprimand, admonishment, forfeiture of limited seniority, and confinement to base are available for lesser misconduct.

The range of sentences available to courts martial reflects the legislative judgment that military misconduct takes a wide range of forms and that the justice system must have available to it a correspondingly wide range of responses. The development of specific sentencing guidelines that provide direction to courts martial on the appropriate range of sentences for specific offences in specific circumstances would significantly improve the consistency and predictability of military sentencing and would assist both the prosecution and the defence in their representations at the sentencing stage.

76.3 The Death Penalty in Military Law: A Critical Examination

The retention of the death penalty as the ultimate sanction for the most extreme military offences is a matter that deserves specific critical attention. The global trend in criminal justice policy, reflected in the progressive abolition of the death penalty in both civilian and military law across most democratic states, is strongly in the direction of abolition. The ICCPR, in its second Optional Protocol, establishes an international commitment to the abolition of the death penalty. Bangladesh has not acceded to the second Optional Protocol, but the trend in international human rights law is unmistakably toward the view that the death penalty is incompatible with the right to life and human dignity.

In the military law context, the death penalty has historically been associated with the wartime offences of mutiny and cowardice before the enemy, and with the most extreme forms of treason and espionage. The emotional and institutional logic of these provisions is understandable: in wartime, where the consequences of military failure can be measured in massive loss of life, the deterrent effect of the ultimate sanction for the ultimate military crime has seemed to military authorities throughout history to be justified. But the deterrent effect of the death penalty is not established by the research evidence, and its application to persons whose conduct may reflect mental illness, combat stress, or moral incapacity rather than deliberate evil creates the same risk of irreversible injustice in the military context as in any other.

The reform of Bangladesh Air Force law to abolish or strictly limit the death penalty as a military sanction is a matter that the institution and the legislature should consider seriously in light of both the international human rights trend and the specific experience of military justice systems that have reformed in this direction without apparent adverse effects on military discipline.

76.4 Mitigation and Aggravation in Military Sentencing

The sentencing stage of courts martial proceedings is the point at which the human circumstances of the accused and of the offence receive the most direct attention. Mitigation evidence, which may include evidence of the accused's service record, personal character, family circumstances, mental health, and the circumstances that contributed to the offending, is presented at the sentencing stage to assist the court in calibrating the sentence appropriately.

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The Air Force Act, following the British military law tradition, authorises the court martial to receive evidence of previous convictions and of the accused's general character at the sentencing stage. This provision allows the court to take a holistic view of the accused's military career and personal record in determining the appropriate sentence. A person with an otherwise exemplary service record who commits a single offence in exceptional circumstances deserves a different sentence from a person with a record of persistent misconduct who commits a similar offence.

The development of specific sentencing guidelines for courts martial, articulating the principal mitigating and aggravating factors relevant to each major category of offence and providing guidance on the weight to be given to each, would significantly improve the quality and consistency of military sentencing decisions. The example of the Manual for Courts-Martial 2024 in the United States, which provides detailed offense-based sentencing data and guidance developed by the Military Justice Review Panel, illustrates what a comprehensive military sentencing framework can look like.

CHAPTER SEVENTY-SEVEN: THE GENERAL ARTICLE AND THE RESIDUAL JURISDICTION

77.1 Civil Offences as Military Offences: The Extension Mechanism

The general provision of the Air Force Act that extends military jurisdiction to civil offences is, in practice, one of the most significant and most frequently applied aspects of the offences framework. Military personnel commit the full range of offences recognised by civilian criminal law, from the most serious to the most trivial, and the question of which forum should hear these cases is one that the Act addresses in general terms but that requires much more specific guidance in practice.

The section of the Air Force Act addressing civil offences provides that a person subject to the Act who commits a civil offence shall be liable to be tried by court martial and sentenced to the punishment provided for the offence in the law applicable in Bangladesh. The effect of this provision is to allow courts martial to try and punish any offence recognised by civilian criminal law when committed by a military person, with the civilian law's maximum punishment as the ceiling for the military court's sentencing power.

The practical application of this provision raises complex questions about the interaction between military and civilian legal frameworks, the applicable rules of evidence, the relationship between military and civilian investigative authorities, and the appropriate forum for different categories of civil offence. These questions are addressed in part by specific provisions of the Act and by the practice of the service, but the absence of comprehensive and publicly accessible guidance leaves significant areas of uncertainty.

77.2 The Relationship Between the Air Force Act Offences and the Penal Code

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The Bangladesh Penal Code of 1860, which remains the foundational criminal law statute of Bangladesh, provides the substantive law for most ordinary criminal offences. The Air Force Act draws on the Penal Code both through the civil offences provision and through the specific provision in Section 4 of the Act that all words and expressions used in the Act and defined in the Penal Code shall have the meanings assigned by that Code.

This interaction between the Air Force Act and the Penal Code means that the substantial body of interpretive jurisprudence that has developed in relation to the Penal Code's provisions, including the specific mental elements required for each offence, the defences available, and the principles of construction applicable to the Code's language, is directly relevant to the interpretation of corresponding provisions in the Air Force Act. The judge advocate in a courts martial proceeding who is addressing a civil offence charge needs to be familiar not only with the Air Force Act's provisions but with the full body of Penal Code jurisprudence applicable to the specific offence charged.

77.3 Concurrent Jurisdiction and Forum Selection

The existence of concurrent jurisdiction between the military courts and the civilian criminal courts over civil offences committed by military personnel creates a significant governance question: how should the decision between military and civilian trial be made, and who should make it? The Air Force Act gives the convening authority a primary role in this decision, but the Act does not specify the factors that should guide the exercise of this authority.

The development of specific criteria for forum selection in civil offence cases, articulating the circumstances in which military trial is appropriate and those in which civilian trial is preferred, is an important element of the governance of military justice. The criteria should include the nature and seriousness of the offence, the connection between the offence and military service, the interests of any civilian victims, the availability and adequacy of military justice procedures for the specific offence, and the principle that the most serious offences against civilians should ordinarily be tried in civilian courts.

CHAPTER SEVENTY-EIGHT: THE OFFENCES AND THE CONSTITUTIONAL ORDER: MILITARY LAW AND DEMOCRACY

78.1 The Deepest Problem: When the Military Turns Against the Constitution

The most profound, most disturbing, and historically most significant category of offences that military law must address is the conduct of military personnel when they turn the power of the military against the constitutional order they are sworn to defend. This category of conduct, which encompasses coups, mutinies against legitimate civilian government, the suppression of democratic institutions, and the use of military force against the civilian population in violation of constitutional authority, sits at the intersection of military criminal law and constitutional democracy in its most existential form.

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Bangladesh's history makes this question particularly urgent. The country has experienced multiple military coups, periods of martial law, and episodes in which military personnel, at various levels of seniority, have used or threatened to use military force in ways that were either constitutionally illegal or of deeply questionable constitutional legitimacy. The arrest warrants issued in October 2025 against sixteen officers of the Bangladesh Army on charges of enforced disappearance, and the subsequent taking of those officers into military custody, demonstrate that the accountability of military personnel for conduct against the civilian population remains a live and urgent issue.

The Air Force Act of 1953, designed for the governance of a single military service in the context of normal military operations, is not an adequate framework for addressing the accountability of military personnel for conduct that challenges the constitutional order itself. The provisions of the Act on mutiny and sedition address internal military disorder but do not specifically address the situation in which military personnel act collectively against the civilian government rather than against the military command hierarchy.

78.2 Constitutional Safeguards and Their Limits

The Constitution of Bangladesh contains specific provisions designed to ensure the subordination of the armed forces to the elected civilian government. Article 61 vests the supreme command of the defence services in the President. The executive authority of the state, under Article 48, is exercisable by the President on the advice of the Prime Minister, ensuring that civilian political authority directs military command. These constitutional provisions establish the fundamental principle that the military serves the elected government, not the reverse.

But constitutional provisions, however clearly drafted, are only as strong as the institutional culture that implements them and the legal mechanisms that enforce them. Bangladesh's history demonstrates that constitutional provisions on civilian control of the military can be circumvented or overridden when the military institution decides to assert its own political authority. The constitutional provisions on civilian control have not prevented military coups, and the legal accountability of military personnel for conduct that challenges civilian authority has been imperfect at best.

The development of a robust legal framework for the accountability of military personnel for unconstitutional conduct, including conduct that challenges civilian authority, suppresses democratic processes, or uses military force against the civilian population outside of constitutionally authorised circumstances, is an essential element of the constitutional governance reform agenda for Bangladesh. This framework must go beyond the existing provisions of the Air Force Act to address the specifically constitutional dimensions of military misconduct.

78.3 International Accountability: The International Crimes Tribunal and Military Law

The Bangladesh International Crimes Tribunal, established under the International Crimes Tribunals Act and amended most recently in November 2024, provides a mechanism for

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prosecuting the gravest human rights violations including genocide, crimes against humanity, and war crimes. The proceedings of the Tribunal have addressed, in various phases of its operation, the conduct of military personnel in connection with the liberation war of 1971 and subsequently.

The relationship between the International Crimes Tribunal and the military justice system under the Air Force Act raises important questions about the appropriate forum for prosecuting military personnel for the most grave violations of human rights and international law. The Tribunal's jurisdiction covers crimes of extraordinary gravity that go far beyond what the Air Force Act was designed to address. But the Air Force Act's provisions on offences against the enemy, on the duty of obedience, and on the general prohibition of conduct to the prejudice of good order and military discipline, create a framework of military accountability that is relevant to the conduct addressed by the Tribunal.

The coordination between military justice and the International Crimes Tribunal, ensuring that military personnel who commit grave human rights violations are held accountable through the most appropriate forum and that military justice proceedings do not create double jeopardy in relation to Tribunal proceedings, is an important governance question that deserves careful attention.

CHAPTER SEVENTY-NINE: THE REFORM AGENDA FOR THE SPECIFIC OFFENCES: A COMPREHENSIVE OVERVIEW

79.1 The Case for Modernisation

The analysis of the specific offences of the Bangladesh Air Force Act conducted in this Part reveals an offences framework that, while functional in its basic structure, reflects the legal thinking of 1953 in ways that create significant problems for contemporary application. The technology environment has changed beyond recognition, the constitutional and international human rights framework has developed enormously, the social and institutional context of military service has evolved significantly, and the specific operational character of contemporary air force service is very different from that which the Act's drafters had in mind.

Modernising the specific offences framework requires attention to several interconnected dimensions. The language of the existing offence provisions must be updated to address the contemporary contexts in which military misconduct occurs, including digital communications, social media, unmanned aerial systems, and cyber operations. The mental elements required for each offence must be clearly specified, eliminating the interpretive uncertainty that currently exists. The interaction between the Air Force Act offences and the general criminal law must be more clearly articulated and the forum selection framework for civil offences must be more specifically guided. And the specific offences relating to the constitutional order must be more directly addressed in light of Bangladesh's specific institutional history.

79.2 The Technology Agenda

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The specific technology-related reforms needed in the offences provisions include, first, the development of specific offences or offence elements addressing digital communications, including the communication of classified information through digital channels, the use of digital platforms to spread alarm or despondency, and the use of digital communications to solicit or incite mutiny, desertion, or other military offences. Second, the development of specific provisions addressing unmanned aerial vehicle operations, including the responsibilities of drone operators, the attribution of liability for drone accidents, and the investigation of drone incidents. Third, the development of specific provisions addressing cyber offences against military information systems, including unauthorised access to military computer systems, the introduction of malware or other harmful code into military networks, and the deliberate or negligent disruption of military communications. Fourth, the update of the provisions relating to air signals and communications equipment to address the contemporary digital communications environment.

79.3 The Human Rights Agenda

The human rights-related reforms needed in the offences framework include, first, the strict limitation of the death penalty provisions and their eventual abolition consistent with Bangladesh's evolving human rights obligations. Second, the development of specific guidance on the application of the conduct to the prejudice of good order and military discipline provision that prevents its use as a vehicle for suppressing legitimate expression or the assertion of legal rights. Third, the reform of the cowardice provisions to specifically address the relevance of combat stress, PTSD, and other mental health conditions to criminal liability for failure in combat. Fourth, the development of specific protections for non-punitive safety reporting in aviation contexts, ensuring that the fear of criminal prosecution does not suppress the reporting of errors and near-misses that is essential to aviation safety. And fifth, the development of clearer guidance on the boundaries of the conduct unbecoming offence and the application of constitutional freedom of expression guarantees to its application.

79.4 The Institutional Integrity Agenda

The institutional integrity-related reforms needed in the offences framework include, first, the development of specific offence provisions addressing the accountability of senior military personnel for unlawful command influence and for the misuse of military justice as an instrument of political or institutional control. Second, the development of specific provisions addressing the accountability of military personnel for conduct that undermines the constitutional order, the civilian authority of government, or the democratic processes of the state. Third, the development of more specific provisions on the interaction between military justice and the International Crimes Tribunal, ensuring that military justice proceedings do not provide a vehicle for impunity in relation to grave human rights violations.

CHAPTER EIGHTY: CONCLUSION TO PART FIVE: THE SPECIFIC OFFENCES IN PERSPECTIVE

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80.1 What the Analysis of Part Five Reveals

The analysis of the specific offences of the Bangladesh Air Force Act conducted in Part Five reveals an offences framework that is both the most familiar and the most practically significant part of the law for officers who encounter the military justice system in their daily professional lives. Every section of the Act that defines an offence, specifies its elements, and prescribes its maximum punishment, represents a legislative judgment about what conduct is incompatible with membership in the Bangladesh Air Force. These judgments are not arbitrary. They express, in legal form, the values and priorities of the institution: the paramount importance of obedience to lawful authority, the duty of presence and readiness for service, the obligations of courage and fortitude in the face of the enemy, the responsibility for the care of public property and aviation assets, and the standard of personal and professional conduct that the officer corps is expected to maintain.

At the same time, the analysis has revealed that many of these legislative judgments were made in 1953, in a legal, political, technological, and social environment very different from that of contemporary Bangladesh. The specific offences provisions of the Air Force Act need systematic review and modernisation to ensure that they remain adequate to the challenges of twenty-first-century military service in a constitutional democracy committed to the rule of law and the protection of human rights.

80.2 The Offences as an Expression of Institutional Values

The catalogue of offences in the Air Force Act is, at a deeper level of analysis, an expression of what the Bangladesh Air Force values. The offences it treats as most grave, mutiny, cowardice before the enemy, desertion in wartime, aiding the enemy, are the offences that strike most directly at the foundational values of military service: loyalty, courage, commitment, and solidarity. The offences it treats as less grave, the miscellaneous conduct offences, the property offences, the personal conduct violations, reflect the broader institutional interest in maintaining a professional, disciplined, and publicly accountable service.

Reading the offences provisions in this light, as an expression of institutional values rather than merely as a technical catalogue of prohibited conduct, reveals something important about the soul of the institution. An institution that criminalises cowardice understands that courage is not merely a personal virtue but a professional and institutional obligation. An institution that criminalises the spreading of alarm and despondency understands that morale is an operational asset. An institution that criminalises conduct unbecoming an officer understands that professional reputation is not merely personal but institutional. These are not trivial insights. They reflect a deep understanding of what it means to be a military professional and what the institution requires of those who join it.

80.3 Looking Ahead to Part Six

Part Six of this handbook will examine the law of military operations, addressing the legal framework within which the Bangladesh Air Force conducts its operational activities. This includes the law of armed conflict as it applies to air operations, the legal framework for

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peacekeeping operations in which Bangladesh Air Force personnel participate as part of United Nations missions, the domestic legal framework for the use of the air force in internal security operations and aid to civil power, the rules of engagement and their legal status, and the accountability framework for operational decisions that result in casualties or damage to property. Part Six will also address the specific legal dimensions of cyber operations, space operations, and the use of autonomous weapons systems, all of which are increasingly relevant to contemporary military aviation. The analysis in Part Six will draw on the foundational framework established in Parts One through Five while extending the handbook's engagement with the specific operational and legal challenges of the modern air force environment.

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End of Part Five

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Editorial Note: Part Six of this handbook will extend the analysis to the law of military operations, addressing the legal framework within which the Bangladesh Air Force conducts its activities in all operational contexts: armed conflict, peacekeeping, internal security, and the emerging domains of cyber and autonomous operations. The author invites officers to bring to Part Six the same rigorous intellectual engagement that Parts One through Five have demanded and, it is hoped, rewarded.

The author dedicates Part Five to the many officers and airmen of the Bangladesh Air Force who have served with honour, navigated the demands of military discipline with integrity, and upheld the standards that the law articulates and that the profession requires. It is dedicated equally to those who have questioned, challenged, and sought to reform a legal framework that does not yet fully reflect the values of the constitutional democracy the Bangladesh Air Force exists to serve.

This handbook is intended as an educational and scholarly resource. It does not constitute legal advice. Officers seeking guidance on specific legal questions arising in the course of their duties should consult the legally qualified advisers of the Bangladesh Air Force.

PART SIX

THE LAW OF MILITARY OPERATIONS: ARMED CONFLICT, PEACEKEEPING, INTERNAL SECURITY, AND THE EMERGING DOMAINS OF CYBER, SPACE, AND AUTONOMOUS WARFARE

PREFATORY NOTE TO PART SIX

The five parts that precede this one have built, brick by careful brick, the jurisprudential, historical, constitutional, disciplinary, and offences architecture of Bangladesh Air Force law. They have examined the philosophical roots of military obedience, traced the colonial inheritance of the Air Force Act of 1953, analysed the constitutional order within which military authority operates, dissected the procedural machinery of courts martial, and catalogued the specific offences that the Act uses to enforce discipline and institutional standards. All of that work has been, in a sense, preparation for the subject matter of Part Six.

Because everything explored so far has been concerned, ultimately, with the regulation of individual conduct within an institution. What Part Six must address is something more consequential, more dangerous, and more philosophically profound: the legal framework within which that institution deploys collective lethal force. The law of military operations is the law of war in its most applied, most urgent, and most morally demanding form. It is law made necessary by violence, law designed to restrain violence, and law that is tested every time a pilot receives an order to engage a target, every time a peacekeeping contingent decides whether to intervene in an unfolding atrocity, every time a commanding officer must determine whether a cyberattack on an adversary's communications network constitutes an act of war.

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Part Six addresses six interconnected domains of operational law as they apply to the Bangladesh Air Force. It begins with the foundational architecture of the law of armed conflict, examining its historical development, its core principles, and the philosophy that underlies them, before addressing the specific ways in which those principles apply to air operations. It then examines the legal framework for peacekeeping operations, within which Bangladesh has earned a place of particular distinction as the world's largest troop-contributing nation. It proceeds to the domestic legal framework for internal security operations and aid to civil power, a topic of acute relevance in a country that has repeatedly seen its armed forces deployed in complex domestic situations. It then addresses the rapidly evolving legal challenges of cyber operations, space operations, and the deployment of autonomous weapons systems, which represent the frontier of operational law and the most pressing intellectual challenges for military lawyers in the contemporary period.

Throughout, this Part maintains the commitment to intellectual seriousness, historical honesty, and jurisprudential depth that has characterised the preceding parts of this handbook. The law of military operations is not a comfortable subject. It deals with killing, with destruction, with the exercise of organised state violence under circumstances where the consequences of error are measured in human lives. To engage with it honestly requires both the technical precision of the lawyer and the moral courage of the philosopher. Officers of the Bangladesh Air Force who read these pages are asked to bring both.

CHAPTER EIGHTY-ONE: FOUNDATIONS OF THE LAW OF ARMED CONFLICT AND ITS APPLICATION TO AIR OPERATIONS

81.1 What Is the Law of Armed Conflict? Definitions, Scope, and Conceptual Architecture

The law of armed conflict, known also by its Latin designation jus in bello, or by the contemporary preferred term international humanitarian law, is the body of international legal rules that governs the conduct of hostilities in armed conflict. It is distinct from, though related to, the jus ad bellum, which governs the legal justification for the use of armed force in the first place, including the UN Charter's prohibition of aggressive war and the recognised exceptions for self-defence and Security Council authorisation. The jus in bello applies regardless of the jus ad bellum question: whether a party to an armed conflict started the war lawfully or unlawfully, both parties are bound by the law of armed conflict in their conduct of hostilities. This principle of independence between jus ad bellum and jus in bello is one of the most philosophically contested features of international humanitarian law, and it will be examined in detail below, but it is the foundational operational premise that every military lawyer must understand.

The sources of the law of armed conflict are multiple and layered. They include treaty law, primarily the four Geneva Conventions of 1949, the two Additional Protocols of 1977, the Hague Regulations of 1907, and a range of specific treaties addressing particular weapons or methods of warfare. They include customary international law, which is law that has developed through the consistent practice of states accompanied by the belief that such practice is legally required. The International Committee of the Red Cross published a major study on customary international humanitarian law in 2005, identifying 161 rules of customary IHL applicable to international and

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non-international armed conflicts, and this study, while its precise identification of specific rules as customary remains contested in some cases, provides the most comprehensive available map of the customary law landscape. And the sources of IHL include the so-called Martens Clause, first articulated in the Preamble to the 1899 Hague Convention and now codified in Article 1(2) of Additional Protocol I, which provides that in cases not covered by treaty or customary rules, persons remain under the protection of the principles of humanity and the dictates of the public conscience.

The Martens Clause deserves particular attention because it is both philosophically remarkable and practically important. It represents a recognition that the law of armed conflict cannot be reduced to a finite catalogue of written rules; that there will always be new weapons, new methods, new situations that existing rules did not anticipate; and that in these gaps, humanity and conscience must serve as the standard. From a jurisprudential perspective, the Martens Clause is a natural law intrusion into a predominantly positivist legal framework, a recognition that the written law of war is always incomplete and must be supplemented by appeal to moral principle. In the contemporary context, as air forces develop drone swarms, directed-energy weapons, cyber capabilities, and autonomous targeting systems, the Martens Clause becomes not a historical artefact but a living legal standard of considerable practical importance.

The scope of the law of armed conflict is defined by the existence of an armed conflict. Under customary IHL and the Geneva Conventions, the existence of an international armed conflict, meaning an armed conflict between two or more states, triggers the full body of Geneva Convention protections. The existence of a non-international armed conflict, meaning an armed conflict between a state and a non-state armed group or between non-state armed groups, triggers a more limited but still substantial body of rules, including Common Article 3 of the Geneva Conventions and, where applicable, Additional Protocol II. The threshold question of when a situation of violence rises to the level of an armed conflict sufficient to trigger IHL protections is one of the most practically significant and contested questions in contemporary IHL, and the ICRC's 2024 Challenges Report noted that conflicting parties increasingly seek to manipulate the threshold question in ways that minimise their legal obligations.

For Bangladesh Air Force officers, the scope question has direct practical relevance. An air force pilot engaged in an air operation against a state adversary is operating in an international armed conflict and is bound by the full body of IHL. A pilot providing air support to counter-terrorism or counter-insurgency operations against a non-state armed group within Bangladesh is operating in a situation that may or may not constitute a non-international armed conflict, depending on the intensity and organisation of the conflict, and the applicable legal framework depends on that characterisation. A helicopter pilot deployed in a UN peacekeeping mission is operating in a context governed simultaneously by IHL, UN rules of engagement, the law of the host state, and a complex web of Status of Forces Agreement provisions. Each of these contexts imposes different legal obligations, and the officer who fails to understand which framework applies is at risk of either illegal conduct or operational paralysis.

81.2 The Historical Development of IHL and Its Application to Air Warfare

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The application of international humanitarian law to air warfare has a history that is both shorter and more turbulent than the application of IHL to land warfare. The laws of war, in their modern treaty form, developed primarily in the context of land warfare in the nineteenth century, and the first major air operations did not occur until the early twentieth century. The result is a body of IHL that, in its treaty foundations, was not specifically designed with air warfare in mind, and the application of general IHL principles to the specific characteristics of air operations has required substantial jurisprudential creativity and interpretive effort.

The first international attempts to address air warfare specifically took the form of the 1923 Hague Rules of Air Warfare, drafted by a commission of jurists and never formally adopted as a binding treaty, but widely regarded as an authoritative articulation of applicable principles. The Hague Rules addressed the distinction between military and civilian aircraft, the protection of civilians from aerial bombardment, and the status of combatants in air operations. They were drafted in the shadow of the First World War's limited but significant air operations and the emerging technological reality of military aviation, but before the scale of civilian bombing that would characterise the Second World War.

The experience of the Second World War raised profoundly disturbing questions about the application of IHL to air warfare. The strategic bombing campaigns of both Allied and Axis powers, including the German bombing of London, Coventry, and Rotterdam, the Allied firebombing of Dresden and Hamburg, and the American atomic attacks on Hiroshima and Nagasaki, involved the deliberate or recklessly indiscriminate destruction of civilian populations on a scale that the pre-war legal framework had manifestly failed to prevent. The law's failure was not merely technical. It reflected a deep tension between the military doctrine of strategic bombing, which held that attacking an enemy's industrial and civilian infrastructure was a legitimate and effective means of degrading military capacity, and the IHL principle of distinction between combatants and civilians. That tension was resolved in the Second World War by subordinating the legal principle to the military doctrine, with consequences measured in hundreds of thousands of civilian deaths.

The 1977 Additional Protocols to the Geneva Conventions were, in substantial part, an attempt to address this failure by articulating more specific and more demanding rules for the conduct of hostilities. Additional Protocol I, which applies to international armed conflicts, contains extensive provisions on the protection of the civilian population, the prohibition of attacks on civilian objects, the rule of proportionality, the requirement of precautions in attack, and the protection of specific categories of objects such as medical facilities, cultural property, works of art, and installations containing dangerous forces such as nuclear plants and dams. These provisions apply fully to air operations and represent the primary treaty-based framework for the legal conduct of air warfare.

The ICRC's Air and Missile Warfare Manual, published in 2010 following an expert process that produced the San Remo Manual on International Law Applicable to Armed Conflicts at Sea, provides the most comprehensive and widely referenced contemporary articulation of the legal rules applicable to air and missile warfare. The Air and Missile Warfare Manual is not itself a binding treaty, but it represents the considered views of a distinguished group of experts on the applicable rules and their interpretation, and it is widely used as a reference by military lawyers

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and operational planners in air forces around the world, including in countries like Bangladesh that have not been extensively involved in the expert processes that produced these instruments.

The ICRC's 2024 Report on the Challenges of Contemporary Armed Conflicts, building on decades of engagement with state parties and non-state armed groups, identified an alarming trend toward what the ICRC called "overly permissive interpretations" of IHL rules on the conduct of hostilities. The Report noted that parties to conflicts were increasingly presenting non-compliant behaviour as compliant through interpretive manipulation of IHL's rules, leaving entire categories of people without effective protection. This observation is directly relevant to air warfare, where the precision and standoff character of modern air weapons creates both the technological possibility of high discrimination in targeting and the temptation to exploit interpretive ambiguity to justify attacks that cause disproportionate civilian casualties. The ICRC's Chief Legal Officer, Cordula Droege, writing in the associated policy blog, emphasised that IHL must be understood and interpreted as a restraining framework against which military operations are measured, not the other way around.

For Bangladesh Air Force officers, the historical lesson of IHL's application to air warfare is both sobering and clarifying. Sobering because it reveals that the law has often failed to prevent mass civilian harm in air operations, that the combination of military necessity arguments, doctrinal convenience, and interpretive flexibility has repeatedly been used to erode the protections that IHL was designed to provide. Clarifying because it demonstrates that the principles at stake, distinction, proportionality, precaution, humanity, are not technical rules invented by lawyers in comfortable peacetime offices but responses to the specific forms of horror that air warfare has historically produced. Understanding why the rules exist is essential to applying them correctly when the pressure of operations creates every temptation to cut interpretive corners.

81.3 The Core Principles of IHL and Their Application to Air Operations

The law of armed conflict rests on four foundational principles that apply to all military operations, including air operations, with equal force. These are the principles of distinction, proportionality, precaution, and humanity. Each of these principles deserves careful and extended analysis, both in its general formulation and in its specific application to the air operations context.

The principle of distinction is, in many respects, the cornerstone of IHL. It provides that parties to an armed conflict must at all times distinguish between the civilian population and combatants and between civilian objects and military objectives, and may direct attacks only against combatants and military objectives. Article 48 of Additional Protocol I states this principle clearly as the basic rule governing the protection of the civilian population. The practical application of the principle of distinction to air operations presents challenges that are both technological and conceptual. The technological challenges arise from the fact that distinguishing combatants from civilians from the altitude and speed of aircraft, or from the remote position of a drone operator, requires sensors, intelligence, and processing capabilities that are not always adequate to the task. The conceptual challenges arise from the inherent

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ambiguity of key terms like "military objective," "direct participation in hostilities," and "civilian object," all of which have been the subject of extensive and ongoing legal debate.

The definition of "military objective" under Article 52(2) of Additional Protocol I is particularly important for air operations because it defines the class of objects that may lawfully be targeted. A military objective is an object that by its nature, location, purpose, or use makes an effective contribution to military action and whose partial or total destruction, capture or neutralisation, in the circumstances ruling at the time, offers a definite military advantage. This definition contains several elements that require careful analysis. The object must make an effective contribution to military action, not merely a potential or theoretical one. The contribution must be to military action specifically, not to the enemy's economy or war effort in general. The military advantage offered by its destruction must be definite, not merely speculative. And all of these assessments must be made in the circumstances ruling at the time, meaning that an object that is a military objective today may cease to be one if it loses its connection to military action.

The principle of proportionality prohibits attacks that may be expected to cause incidental loss of civilian life, injury to civilians, damage to civilian objects, or a combination thereof, that would be excessive in relation to the concrete and direct military advantage anticipated. This is codified in Article 51(5)(b) and 57(2)(a)(iii) of Additional Protocol I. The proportionality assessment is one of the most difficult judgments that military commanders and legal advisers are required to make, because it involves weighing incommensurable values: the military advantage of an attack against the anticipated civilian harm. These are not quantities that can be reduced to a common metric. A commander assessing whether to authorise an air strike that will destroy a command and control facility but will also kill an uncertain number of civilians must weigh these considerations against each other using judgment, experience, and conscience rather than mathematical formula.

The principle of precaution requires those who plan or decide upon attacks to do everything feasible to verify that the objectives to be attacked are military objectives, to take all feasible precautions in the choice of means and methods of attack to minimise incidental civilian casualties and damage, and to refrain from launching an attack that may be expected to cause excessive civilian harm. Article 57 of Additional Protocol I articulates these requirements in considerable detail. For air operations, the precaution requirement has specific implications for target planning, intelligence collection and assessment, the selection of munitions and delivery systems, the timing of attacks, and the conduct of battle damage assessment. The feasibility standard is important: precautions are required only to the extent that they are feasible, taking into account military and humanitarian considerations, including the urgency of the situation and the safety of attacking forces.

The principle of humanity, which has ancient roots and finds contemporary expression in both the Martens Clause and the general prohibition of superfluous injury and unnecessary suffering, provides the moral foundation for the entire body of IHL. It reflects the conviction that even in war, which is itself a negation of the normal conditions of civilised life, there are limits derived from the recognition of human dignity that must not be transgressed. The principle of humanity is not merely a background aspiration but an operative legal standard that informs the interpretation of all other IHL rules. When a commander or legal adviser is uncertain whether a

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particular action is permitted by the law, the principle of humanity provides the moral compass: would this action be consistent with the basic demands of human dignity and compassion?

For officers of the Bangladesh Air Force, these four principles constitute the operational legal framework within which all air operations must be conducted. They are not external constraints imposed by foreign lawyers on military effectiveness. They are the expression, in legal form, of the values that distinguish a professional air force fighting within the law from an armed gang that treats violence as its only method. The officer who understands these principles deeply, who has internalised them as professional standards rather than merely memorised them as legal rules, is both a better lawyer and a better officer.

81.4 Air Strikes and Targeting Law: The Legal Analysis of an Attack Decision

The decision to conduct an air strike is one of the most consequential legal acts that any military officer can be involved in. It combines elements of factual assessment, legal analysis, moral judgment, and operational planning in a manner that can rarely be perfectly accomplished under the time pressure, information limitations, and physical danger of actual combat operations. Understanding the legal structure of the targeting decision is essential for any officer involved in planning, authorising, or conducting air operations.

The legal analysis of a targeting decision begins with the question of whether the proposed target is a military objective within the meaning of Article 52(2) of Additional Protocol I. This requires, first, a factual assessment of the object's nature, location, purpose, and use and its effective contribution to the enemy's military action. Second, it requires an assessment of the military advantage that the object's destruction, capture, or neutralisation would offer, and whether that advantage is concrete and direct rather than speculative or indirect. Third, it requires a determination that these conditions are satisfied in the circumstances ruling at the time of the attack, not at some past or hypothetical future time.

The targeting analysis then proceeds to the proportionality assessment, which requires an estimate of the foreseeable incidental harm to civilians and civilian objects from the proposed attack. This estimate must be made in good faith on the basis of available information, and it requires specific consideration of the number and nature of civilians likely to be present in and around the target, the expected effects of the weapons to be used including blast radius and fragmentation patterns, and the possibility of secondary effects from damage to civilian infrastructure. The proportionality judgment then requires a comparison of this estimated harm against the concrete and direct military advantage anticipated from the attack. If the anticipated civilian harm appears excessive relative to the military advantage, the attack is prohibited.

If both the military objective determination and the proportionality assessment are satisfied, the targeting analysis requires the identification and implementation of all feasible precautions to minimise incidental harm. These precautions may include the selection of munitions with reduced explosive power or improved accuracy, the choice of an attack time that minimises civilian presence in the target area, the adjustment of the angle of attack to reduce blast or fragmentation effects on civilian structures, and the provision of advance warning to civilians

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where this is feasible without compromising the effectiveness of the operation or the safety of attacking forces.

The legal and moral weight of this analysis is reflected in the fact that under both domestic military law and international criminal law, commanders who authorise attacks that violate these rules may be held individually criminally responsible. The Rome Statute of the International Criminal Court, under Article 8(2)(b)(iv), defines as a war crime the intentional launching of an attack in the knowledge that such attack will cause incidental loss of life or injury to civilians or damage to civilian objects that is clearly excessive in relation to the concrete and direct overall military advantage anticipated. The word "clearly" introduces a threshold that makes prosecution for proportionality violations the most difficult category of war crimes to prove, but the existence of criminal accountability for such decisions is an important reminder that the proportionality principle is not merely advisory.

In the Bangladesh Air Force context, the targeting decision-making framework is governed by a combination of the general principles of IHL, Bangladesh's specific treaty obligations, the rules of engagement applicable to specific operations, and the standard operating procedures of the air force for target planning and strike authorisation. The development and maintenance of a robust, institutionalised targeting process, in which legal advisers are systematically integrated into operational planning at all levels, is one of the most important institutional investments that the Bangladesh Air Force can make for both legal compliance and operational effectiveness.

81.5 Protected Persons and Objects in Air Warfare: The Specific Protections

Beyond the general framework of distinction and proportionality, IHL provides specific and heightened protections for particular categories of persons and objects that air operations must respect. These specific protections are worth examining in some detail because they address situations that are particularly likely to arise in the course of air operations and that present specific legal risks if not properly understood.

Medical units and transports are specifically protected under Articles 12 and 21 through 31 of Geneva Convention I and the equivalent provisions of Additional Protocol I. Under these provisions, fixed and mobile medical units may not be attacked under any circumstances so long as they are used exclusively for medical purposes. The specific protection afforded to medical facilities has been one of the most grievously violated rules of IHL in contemporary conflicts, as documented extensively in the ICRC's 2024 Challenges Report, and its relevance for air operations is direct: air strikes on hospitals, medical aircraft, or medical transport vehicles are unambiguously prohibited unless these facilities have been used outside their humanitarian function to commit acts harmful to the enemy, in which case protection ceases after a warning has been given.

Cultural property, including historic monuments, works of art, and places of worship, is protected under the 1954 Hague Convention for the Protection of Cultural Property in the Event of Armed Conflict and its Protocols, as well as under Article 53 of Additional Protocol I. The protection of cultural property in air operations requires both awareness of the location of protected sites and operational planning that treats them as off-limits except in situations of

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imperative military necessity, a threshold that is significantly higher than the ordinary military necessity standard. Bangladesh is a party to the 1954 Hague Convention, and its air force operations must respect its requirements.

Works and installations containing dangerous forces, specifically dams, dykes, and nuclear electrical generating stations, receive special protection under Article 56 of Additional Protocol I. These installations may not be made the object of attack even where they are military objectives, if such attack may cause the release of dangerous forces and consequent severe losses among the civilian population. The rationale for this special protection is obvious: the destruction of a major dam in the course of an air operation could kill far more civilians through flooding than the direct effects of the attack. For Bangladesh Air Force operations in the region, where both Bangladesh and its neighbours maintain major water infrastructure, awareness of Article 56 protections is an operational necessity.

The 1977 Additional Protocol I also establishes specific protection for the natural environment under Article 55, prohibiting methods or means of warfare that are intended or may be expected to cause widespread, long-term, and severe damage to the natural environment. This provision, which was partly a response to the use of herbicides and environmental manipulation in the Vietnam War, has acquired renewed relevance in the contemporary context of climate-sensitive security environments. Air operations involving attacks on fuel storage facilities, chemical plants, or other installations whose destruction might cause major environmental contamination must take this provision into account in operational planning.

CHAPTER EIGHTY-TWO: THE PHILOSOPHICAL AND JURISPRUDENTIAL FOUNDATIONS OF IHL AND THEIR APPLICATION TO THE BANGLADESH CONTEXT

82.1 Just War Theory and Its Relationship to International Humanitarian Law

The law of armed conflict does not exist in a philosophical vacuum. It is sustained by and in conversation with one of the oldest traditions of moral philosophy in Western and Islamic thought: the tradition of just war theory. Understanding the philosophical foundations of IHL is not merely an academic exercise for officers of the Bangladesh Air Force. It is essential to understanding why the law demands what it demands, why its requirements are taken seriously by professional militaries, and why the officer who violates them is not merely breaking a rule but betraying a moral standard that has been articulated and defended across many centuries of serious intellectual engagement with the ethics of violence.

The just war tradition emerged from the intersection of Roman law, early Christian ethics, and medieval scholastic philosophy. Saint Augustine of Hippo, writing in the late fourth and early fifth centuries, provided the earliest systematic Christian engagement with the ethics of war, arguing that war could be justified when it aimed at the restoration of peace, was conducted under legitimate authority, and was motivated by love rather than hatred. Saint Thomas Aquinas elaborated these ideas in the thirteenth century, identifying three conditions for just war:

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legitimate authority, just cause, and right intention. These elements formed the nucleus around which subsequent just war theory developed, generating the distinction between jus ad bellum (when war may justly be begun) and jus in bello (how war may justly be conducted).

The jus in bello dimension of just war theory, which is most directly relevant to IHL, holds that even in a just war, the means of warfare are morally constrained. The principle of discrimination (which corresponds to IHL's principle of distinction) holds that intentional killing of non-combatants is morally impermissible. The principle of proportionality holds that the harm caused in the pursuit of a military objective must not be disproportionate to the good aimed at. These moral principles, debated by philosophers, theologians, and military practitioners across centuries, found their way into treaty law through the nineteenth-century codification movement and the subsequent development of the Geneva Conventions and Additional Protocols.

Michael Walzer's influential 1977 work "Just and Unjust Wars" provided a comprehensive modern philosophical defence of the just war tradition, arguing against the realist position that war is simply a domain of power politics where morality has no purchase. Walzer insisted that war has an irreducible moral dimension, that ordinary soldiers and commanders make moral judgments in the conduct of operations, and that those judgments are not merely strategic calculations but genuine moral assessments of permissibility and prohibition. His analysis of the doctrine of double effect, under which foreseeable civilian casualties may be permissible if they are the unintended side effects of attacks on legitimate military objectives rather than the intended objects of attack, remains one of the most important contributions to understanding the moral logic of IHL's proportionality principle.

The just war tradition is not, however, a purely Western inheritance. Islamic jurisprudence developed its own sophisticated body of thought on the ethics of war, and the tradition of Islamic just war theory, rooted in the Quran, the Hadith, and the writings of the great jurists, shares significant structural features with the Western tradition even as it differs in theological grounding and specific conclusions. The prohibition of killing non-combatants, the requirement of proportionality, the protection of prisoners, and the prohibition of unnecessary destruction of civilian property all have recognised foundations in classical Islamic jurisprudence. For officers of the Bangladesh Air Force, serving in a predominantly Muslim society with deep roots in both Bengali cultural traditions and Islamic ethical thought, understanding the Islamic dimensions of just war theory enriches the professional ethical framework within which they operate.

The tension between just war theory's moral demands and the operational pressures of actual military operations is one of the enduring challenges of military ethics. The philosophical tradition insists on the primacy of the moral standard. The operational reality confronts commanders with situations where information is incomplete, time is short, lives are at risk, and the morally correct course of action is far from clear. The resolution of this tension cannot be found in the abandonment of one side in favour of the other. It requires the development of practical wisdom, the capacity to navigate moral complexity under pressure with judgment, experience, and the habitual commitment to the principles that the law and the tradition articulate.

82.2 The Independence of Jus ad Bellum and Jus in Bello: Philosophy and Controversy

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One of the most philosophically contested features of IHL is the principle of the independence of jus in bello from jus ad bellum. This principle holds that the rules governing the conduct of hostilities apply equally to all parties to an armed conflict, regardless of whether they were the aggressor or the victim of aggression, regardless of whether their cause is just or unjust. A state that has been unlawfully attacked must comply with IHL in its defensive operations, and the aggressors who started the unjust war are entitled to the protections of IHL as combatants even though their government's decision to wage war was criminal under the UN Charter.

This principle of equal application has a powerful practical justification: if IHL protections depended on the moral or legal status of the conflict as a whole, combatants fighting for the "wrong" side would have no legal protection and could be treated arbitrarily. Soldiers follow the orders of their governments, and those governments' political decisions to go to war are generally not within the soldiers' control or knowledge. Extending IHL protections equally to all combatants encourages the humanitarian conduct of hostilities by all parties and maintains the possibility of reciprocal compliance.

But the philosophical objections to the independence principle are serious and have been pressed with increasing force by a number of prominent just war theorists in recent decades, most notably Jeff McMahan in his 2009 work "Killing in War." McMahan argues that the equal application principle is morally indefensible: combatants fighting for an unjust cause lack the moral justification for killing that combatants fighting for a just cause possess, and the equal application principle implicitly grants moral equivalence to killings that are not morally equivalent. On McMahan's view, a soldier who kills an enemy combatant while fighting a just defensive war commits a morally permissible act of self-defence, while a soldier who kills while fighting an unjust war of aggression commits a form of murder, regardless of compliance with the technical rules of IHL.

This debate has practical implications that go beyond academic philosophy. It bears on questions of individual moral responsibility for participation in unjust wars, on the design of accountability mechanisms for aggressive warfare, and on the legitimacy of combatant immunity from prosecution for acts of lawful killing in accordance with IHL. For officers of the Bangladesh Air Force, the debate raises the question of their own moral responsibility for the operations they participate in: compliance with the technical rules of IHL is necessary but not sufficient for moral justification of their actions. The legitimacy of the underlying operation also matters.

The Bangladesh Air Force has participated in operations across a range of contexts, from internal security to peacekeeping to potential international armed conflict. In each of these contexts, the question of whether the operation as a whole is justified is distinct from the question of how the operation must be conducted. Officers who develop the philosophical literacy to hold both questions in mind simultaneously, who can assess both the justice of the cause and the lawfulness of the means, are better equipped both legally and morally for the responsibilities of operational command.

82.3 The Principle of Military Necessity: Its Proper Scope and the Danger of Its Abuse

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Military necessity is both a permissive principle in IHL, justifying certain actions that would otherwise be prohibited, and a limiting principle, operating to confine IHL's permissions to what is genuinely required for the legitimate aims of warfare. Understanding the proper scope of military necessity, and the danger of its abuse, is one of the most important conceptual challenges in the law of armed conflict.

In its legitimate formulation, military necessity permits the use of force that is necessary to accomplish a legitimate military objective, limited to the extent required by that objective, and proportionate to the military advantage anticipated. It does not permit actions that are prohibited by specific IHL rules, even if those actions would confer military advantage. The specific prohibitions of IHL, such as the prohibition of torture, the prohibition of attacking medical facilities, and the prohibition of using prohibited weapons, are not subject to a military necessity override. They are absolute prohibitions precisely because the humanitarian harm they prevent was judged, in the treaty negotiations that produced them, to outweigh any military necessity that could be advanced in justification.

The danger of military necessity as a concept lies in its susceptibility to inflation beyond its proper boundaries. Historically, the doctrine of Kriegsraison, or military reason of state, was used to argue that military necessity could override IHL entirely if a military commander judged it necessary for the achievement of military objectives. This position was definitively rejected by the Nuremberg Tribunal, which held that military necessity was not a justification for violations of the laws of war and that the argument from military necessity did not excuse conduct that was otherwise prohibited. The tribunal's rejection of the Kriegsraison doctrine is one of the foundational principles of modern IHL and has been consistently reaffirmed in subsequent international jurisprudence.

In contemporary air operations, the risk of military necessity inflation is real and must be guarded against institutionally. The development of legal review processes for targeting, the integration of legal advisers into operational planning, and the training of officers in the proper scope of military necessity are all essential safeguards. Officers who are routinely exposed to the temptation of reasoning from military advantage to legal permission, rather than from legal permission to military advantage, need institutional structures that reinforce the proper relationship between these concepts.

For the Bangladesh Air Force, the specific institutional mechanism for guarding against military necessity abuse is the integration of the judge advocate function into operational planning. The judge advocate's role in operational contexts is not merely to provide post-hoc legal opinions on whether actions already taken were lawful. It is to participate actively in the planning process, to raise legal questions before decisions are made, to counsel commanders on the limits of military necessity, and to ensure that the legal framework within which operations are conducted is understood and respected by all levels of command.

CHAPTER EIGHTY-THREE: RULES OF ENGAGEMENT: LEGAL STATUS, CONTENT, AND APPLICATION

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83.1 The Nature and Legal Status of Rules of Engagement

Rules of engagement are the directives issued by a competent military authority that define the circumstances, conditions, degree, and manner in which force may or may not be applied by military forces. They are one of the primary mechanisms through which the abstract principles of IHL and the policy decisions of political authority are translated into operational guidance for commanders and individual service members. Understanding the legal status and content of rules of engagement is essential for officers of the Bangladesh Air Force, both because rules of engagement govern their own conduct in operations and because violations of rules of engagement may constitute both military offences under the Air Force Act and violations of IHL.

The legal status of rules of engagement is more complex than it might appear. Rules of engagement are not themselves a source of international law, nor are they a formal source of domestic law in the sense of statute or regulation. They derive their binding force from the authority of the military command hierarchy: they are orders, and the duty to obey lawful orders under the Air Force Act obliges personnel to comply with them. But this means that the lawfulness of rules of engagement is a separate question from their binding character. A rule of engagement that complies with IHL and domestic law is binding and must be followed. A rule of engagement that requires conduct that violates IHL is not merely invalid: following it would expose the officer following it to criminal liability under international law, and the superior order defence provides only partial and limited protection.

The relationship between rules of engagement and IHL is complex in another respect: rules of engagement are not merely a translation of IHL into operational guidance. They may be more restrictive than IHL requires, for policy or political reasons, or they may attempt to grant permissions that approach the limits of what IHL allows. The right of self-defence, for example, is recognised in both domestic law and IHL as a basis for the use of force that is not contingent on a specific rule of engagement permitting it. An officer who is attacked has the right to use necessary and proportionate force in self-defence regardless of what the rules of engagement say, and rules of engagement cannot eliminate this right.

The development of rules of engagement for Bangladesh Air Force operations requires careful legal analysis by the judge advocates of the service, in consultation with operational commanders and, for operations under UN mandate, with the legal advisers of the relevant UN mission. The process of developing rules of engagement should begin with a comprehensive review of the applicable legal framework, including relevant IHL treaties, customary IHL, and any specific legal constraints arising from the character of the operation. It should then involve detailed consultation with operational commanders to ensure that the rules reflect operational realities and provide meaningful guidance for the situations that operators are likely to encounter.

83.2 Rules of Engagement in Air Operations: Specific Considerations

Air operations present specific challenges for the design and application of rules of engagement that arise from the distinctive characteristics of air warfare: the speed of aircraft, the altitude at which operations are conducted, the standoff character of modern air weapons, and the complexity of the targeting decision-making process.

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The speed of military aircraft creates timing constraints that are not present in land operations. A pilot who must decide within seconds whether to engage a target, based on sensor data and threat assessments that may be incomplete or ambiguous, is operating in a very different decision environment from a land commander who may have minutes or hours to deliberate on an attack decision. Rules of engagement for air operations must take this timing reality into account, providing guidance that is specific enough to be meaningful and general enough to be applicable to the range of situations that airborne personnel will encounter.

The standoff character of modern air weapons, particularly precision-guided munitions and cruise missiles, means that the attack decision is often made at a significant remove from the target, by operators who may be relying entirely on sensor data and intelligence assessments rather than direct observation. This creates significant risks of targeting error, particularly the misidentification of targets. Rules of engagement for air operations should address the intelligence standards required before an attack decision can be authorised, the consequences of uncertainty about the nature of potential targets, and the procedures for aborting an attack if new information comes to light during the approach to the target.

The dual-use character of much civilian infrastructure, including airports, communications facilities, fuel storage, and transportation networks, creates particular challenges for target identification in air operations. Civil airports may serve as bases for military operations. Civilian communications infrastructure may be used for military command and control. Fuel storage facilities may supply military vehicles. The determination of whether these dual-use objects qualify as military objectives requires careful analysis of their specific use and contribution to military action in the circumstances ruling at the time, and rules of engagement should provide specific guidance on the standards to be applied in making these determinations.

83.3 The Philosophical Dimensions of Rules of Engagement: Authority, Obedience, and Conscience

The rules of engagement framework raises philosophical questions about the relationship between authority, obedience, and individual conscience that connect directly to some of the deepest themes in military jurisprudence. An officer who follows rules of engagement that turn out to have authorised unlawful action bears some personal moral and legal responsibility for that action, even if the rules of engagement were issued by competent authority. Conversely, an officer who refuses to follow lawful rules of engagement on grounds of personal moral disagreement with the policy they reflect risks the breakdown of military discipline and the undermining of the chain of command.

The resolution of this tension requires the same analysis that was applied in the preceding parts of this handbook to the question of obedience to superior orders: obedience is a fundamental military virtue, but it is not unlimited. The limits of obedience are set by the law, including IHL, and by the fundamental moral prohibitions against participation in atrocities. Within those limits, the officer's duty is to follow lawful rules of engagement, even when those rules reflect policy judgments with which the officer personally disagrees. Beyond those limits, the officer's duty is to refuse, and if necessary, to resist.

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The practical wisdom required for the proper exercise of this judgment cannot be acquired merely from reading handbooks. It requires the development, through training, education, and reflective professional experience, of the capacity to recognise moral and legal limits when they arise, to assess the situation accurately under pressure, and to act with both courage and restraint. The Bangladesh Air Force's officer education and professional development programmes should give prominent place to the development of this practical wisdom, treating it not as a secondary or optional addition to technical training but as a core professional competency.

CHAPTER EIGHTY-FOUR: THE BANGLADESH AIR FORCE IN UNITED NATIONS PEACEKEEPING OPERATIONS: LEGAL DIMENSIONS AND JURISPRUDENTIAL ANALYSIS

84.1 Bangladesh as a Major Peacekeeping Contributor: The Legal and Historical Context

Bangladesh's record as a contributor to United Nations peacekeeping operations is without parallel among nations of comparable size and resources. As of 2025, Bangladesh is the world's largest troop-contributing country to UN peacekeeping, with more than 83,000 Bangladeshi personnel having served in 45 UN peacekeeping operations in more than 40 countries since the country's first deployment to UNIIMOG in 1988. The Bangladesh Air Force has been a specific component of this remarkable national commitment, deploying helicopter and fixed-wing aircraft units in several missions, most notably the BANAIR contingent in the Democratic Republic of Congo under MONUSCO, which provides air mobility and medical evacuation capabilities critical to the mission's operation.

In May 2025, at the UN Peacekeeping Ministerial held in Berlin, Bangladesh pledged to deploy specialised military and police units, enhance female participation, and introduce advanced technology solutions including AI-integrated camp surveillance and response systems to strengthen its peacekeeping contributions. Bangladesh also pledged the installation of 1.8 MW solar panels in existing UN missions, reflecting an increasingly sophisticated understanding of the environmental dimensions of peacekeeping operations. These pledges were made in the context of Bangladesh's recognition of its unique position as a major peacekeeping contributor and its commitment to maintaining the professional standards that have earned Bangladeshi peacekeepers a global reputation for excellence and integrity.

The legal framework governing Bangladesh's peacekeeping operations is complex and multi-layered, combining provisions of the UN Charter, resolutions of the Security Council, the Status of Forces Agreement concluded between the UN and the host state, memoranda of understanding between Bangladesh and the UN, the law of the host state, and the applicable rules of IHL. Understanding this complex legal architecture is essential for officers of the Bangladesh Air Force serving in peacekeeping missions, both for the protection of their own legal position and for the effective discharge of their operational and legal responsibilities.

The constitutional basis for Bangladesh's participation in UN peacekeeping operations deserves specific attention. The Preamble to the Constitution of Bangladesh declares the nation's

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commitment to contributing to international peace and cooperation. This constitutional commitment provides the normative foundation for Bangladesh's peacekeeping engagement, grounding the state's extraordinary investment in peacekeeping in the fundamental values of the constitutional order. At the same time, the constitutional dimension creates responsibilities that go beyond merely deploying personnel: it requires that those personnel conduct themselves in accordance with the highest professional and ethical standards, reflecting the constitutional values of a state committed to peace and human dignity.

84.2 The Legal Framework for UN Peacekeeping: The Architecture of Authority

The legal basis for UN peacekeeping operations has evolved considerably over the seven decades since the first UN peacekeeping mission was deployed in 1948. Classical peacekeeping operations, developed in the context of the Cold War, were based on three principles: the consent of the host state, the impartiality of the peacekeeping force as between the parties to the conflict, and the use of force only in self-defence. These principles, sometimes described as the holy trinity of traditional peacekeeping, reflected both the political constraints of the Cold War era, in which superpower rivalry limited the Security Council's ability to act under Chapter VII of the UN Charter, and a particular conception of the peacekeeping function as monitoring and facilitating political agreements rather than enforcing peace.

Contemporary UN peacekeeping operations have moved significantly beyond this traditional model, and the legal framework has evolved accordingly. Missions mandated under Chapter VII of the UN Charter, which authorises the Security Council to take action necessary to maintain or restore international peace and security, give peacekeeping forces broader authority to use force, including offensive force, to protect civilians and enable the implementation of the mission's mandate. MONUSCO, the mission in which Bangladesh Air Force aviation units are currently deployed, operates under a robust Chapter VII mandate that authorises it to use all necessary means to protect civilians and to support the Congolese authorities in their stabilisation efforts.

The evolution from Chapter VI to Chapter VII-based peacekeeping has significant legal implications for personnel deployed in these missions. The authority to use force offensively in protection of civilians is fundamentally different from the traditional self-defence limitation, and it creates both greater operational authority and greater legal responsibility. Officers commanding or participating in offensive peacekeeping operations under Chapter VII mandates are exercising authority that resembles the authority of officers in armed conflict more closely than the authority of traditional peacekeepers, and the legal framework of IHL applies to their operations accordingly.

The International Court of Justice's 2022 judgment in Democratic Republic of Congo v. Uganda, while primarily addressing state responsibility for the conduct of Ugandan forces in the DRC, provided important analysis of the legal framework applicable to operations in the complex security environment of eastern Congo, where MONUSCO, Congolese government forces, and multiple armed groups operate in overlapping and sometimes conflicting ways. The judgment's analysis of IHL principles, state responsibility, and the obligations of military forces operating in another state's territory is directly relevant to the Bangladesh Air Force units deployed in MONUSCO.

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84.3 Status of Forces Agreements and Their Legal Implications for Air Force Personnel

Status of Forces Agreements (SOFAs) are treaties between the United Nations and the host state of a peacekeeping operation that define the legal status of UN personnel deployed in that state, including their immunities from host state jurisdiction, their rights and obligations, and the procedures for resolving disputes arising from their activities. For Bangladesh Air Force personnel deployed in peacekeeping missions, understanding the SOFA framework is essential both for their legal protection and for understanding the limits of their operational authority.

The standard model SOFA used by the UN grants UN peacekeeping personnel immunity from the criminal and civil jurisdiction of the host state for acts performed in their official capacity. This immunity is functional rather than personal: it attaches to acts done in the exercise of official peacekeeping functions, not to the individual's personal life. A Bangladesh Air Force pilot who causes damage to civilian property during a legitimate peacekeeping flight is protected by functional immunity. The same pilot who commits a criminal offence unrelated to the exercise of peacekeeping functions is not protected.

The existence of functional immunity from host state jurisdiction does not mean that peacekeepers are immune from accountability altogether. Under the SOFA framework and UN policies, jurisdiction over UN personnel for criminal acts committed in their personal capacity rests with the troop-contributing country, in this case Bangladesh. Bangladesh therefore bears the primary responsibility for prosecuting Bangladesh Air Force personnel who commit criminal offences while serving in peacekeeping missions. This responsibility is discharged through the military justice system under the Air Force Act, subject to the specific provisions and limitations that the peacekeeping context creates.

The accountability gap that arises when troop-contributing countries fail to exercise this jurisdiction effectively is one of the most significant institutional failures of the current peacekeeping framework. Cases of sexual exploitation and abuse, theft, and other misconduct by UN peacekeepers have repeatedly resulted in inadequate accountability because the troop-contributing country has not prosecuted effectively. Bangladesh, which has invested heavily in its reputation as a peacekeeping nation, has a strong institutional interest in ensuring that its mechanisms for prosecuting misconduct by personnel serving in peacekeeping missions are robust, effective, and publicly credible.

In 2007, allegations of misconduct involving Bangladeshi troops in South Sudan led to internal investigations and disciplinary action. The Bangladesh armed forces' response to these allegations, including the implementation of improved pre-deployment training and conduct standards, reflects the institutional commitment to maintaining the standards that have made Bangladesh's peacekeeping contribution respected. But the existence of past misconduct is a reminder that institutional reputation, however carefully built, can be destroyed by individual failures to uphold standards.

84.4 The Use of Air Power in Peacekeeping: Legal Considerations for Aviation Personnel

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The deployment of aviation assets, including helicopters and fixed-wing aircraft, in UN peacekeeping operations raises specific legal considerations that deserve careful analysis. Bangladesh Air Force aviation units have served in demanding and dangerous operational environments, most notably in the Democratic Republic of Congo, where BANAIR has provided essential air mobility and medical evacuation services to a mission operating in a vast and operationally challenging theatre.

The use of air power in peacekeeping operations must comply simultaneously with the rules of engagement established by the UN mission, the provisions of IHL applicable to the security situation in the theatre, and the professional standards of the Bangladesh Air Force. Where a Chapter VII mandate authorises the use of force for the protection of civilians, aviation assets may be used to provide close air support to ground forces, to conduct surveillance and reconnaissance operations, to provide medical evacuation under fire, and in certain circumstances, to conduct strikes against armed groups threatening civilian populations or UN personnel.

The authority to conduct air strikes in peacekeeping operations is hedged by multiple layers of constraint. The Security Council resolution establishing the mission must provide a mandate adequate to support the specific use of force contemplated. The mission's rules of engagement must specifically authorise the action. The action must be proportionate to the immediate threat and necessary to accomplish the protective purpose. And in situations where the armed group being targeted constitutes a party to an armed conflict, the full framework of IHL, including the principles of distinction, proportionality, and precaution, applies to the strike.

The complexity of these overlapping legal constraints creates significant risks of either under-use of available force, resulting in preventable civilian casualties from armed groups that peacekeepers could have stopped, or over-use of force, resulting in disproportionate harm and the compromise of the mission's impartiality and mandate. The development of robust legal advisory capacity within UN peacekeeping missions, including specific capacity to advise on the legal dimensions of air operations, is an essential institutional requirement. Bangladesh Air Force judge advocates serving with peacekeeping missions should have specific training in the intersection of UN peacekeeping law, IHL, and aviation operations.

84.5 Sexual Exploitation and Abuse in Peacekeeping: Accountability and the Bangladesh Air Force

The issue of sexual exploitation and abuse by UN peacekeepers is one of the most damaging controversies in the history of international peacekeeping. Documented cases of peacekeepers engaging in sexual exploitation of civilians, including in extreme cases the exchange of food or protection for sex, and cases of sexual violence against those the peacekeepers were mandated to protect, have severely damaged the credibility and reputation of the peacekeeping enterprise. Bangladesh, as the world's largest troop-contributing country, has both a direct institutional interest in preventing and addressing such misconduct by its personnel and a broader interest in ensuring that the peacekeeping enterprise as a whole maintains the standards and credibility upon which its effectiveness depends.

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The UN's policy on sexual exploitation and abuse, Secretary-General's Bulletin ST/SGB/2003/13, prohibits all forms of sexual exploitation and abuse by UN staff and related personnel, including peacekeepers. It specifically prohibits sexual activity with any person under 18 years of age and any exchange of money, employment, goods, or services for sex, as well as any sexual relationship with beneficiaries of assistance that could affect the impartiality of UN operations. Violations of this policy are to be referred to the troop-contributing country for prosecution under its national law.

Bangladesh has developed specific training and awareness programmes to address the risk of sexual exploitation and abuse by its peacekeeping personnel. The pre-deployment training provided through the Bangladesh Institute of Peace Support Operation Training (BIPSOT) includes specific instruction on the UN's zero-tolerance policy and the legal and disciplinary consequences of violations. The deployment of female peacekeepers, in which Bangladesh has been a global leader, has been shown to reduce the incidence of sexual exploitation and abuse and to increase community trust in peacekeeping operations.

From the perspective of the Bangladesh Air Force, the sexual exploitation and abuse issue is directly relevant to all personnel deployed in peacekeeping missions, including aviation personnel who may have significant contact with local populations in the course of their duties. The legal framework for prosecuting such offences by Bangladesh Air Force personnel is the Air Force Act's civil offences provision, which allows courts martial to try and punish any offence recognised by Bangladeshi civilian criminal law when committed by air force personnel. The senior leadership of the Bangladesh Air Force has an institutional responsibility to ensure that zero-tolerance for sexual exploitation and abuse is not merely a policy statement but a lived reality enforced through consistent institutional action.

CHAPTER EIGHTY-FIVE: INTERNAL SECURITY OPERATIONS AND AID TO CIVIL POWER: THE DOMESTIC OPERATIONAL LEGAL FRAMEWORK

85.1 The Constitutional and Legal Framework for Military Involvement in Internal Security

The deployment of the Bangladesh Air Force in internal security operations or in aid of the civil power represents one of the most legally and constitutionally sensitive categories of military activity. The deployment of armed forces against the country's own civilian population, or in support of law enforcement in domestic security situations, raises fundamental questions about the relationship between military authority and civilian constitutional order, the rights of citizens confronted by military force, and the limits of military discretion in situations where the rule of law and basic liberties may be under pressure.

The constitutional framework for military involvement in internal security in Bangladesh rests on several provisions. Article 61 of the Constitution vests the supreme command of the defence services in the President. Article 46 provides for the indemnification, by Act of Parliament, of persons who have acted in connection with the maintenance or restoration of order in

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Bangladesh. The provisions of the Special Powers Act, the Code of Criminal Procedure, and various public order legislation provide specific legal authority for the deployment of armed forces in support of civil law enforcement. The detailed structure of this legal framework, including its historical evolution, constitutional controversies, and practical application, deserves careful analysis.

The historical record of Bangladesh's experience with internal security operations by the armed forces is complex and in important respects troubling. The military has been deployed in internal security roles in a range of situations, from flood relief and disaster response to anti-corruption operations under Operation Clean Heart in 2002 and 2003, to electoral support, to counter-insurgency operations in the Chittagong Hill Tracts, to support for law enforcement during periods of political unrest. The character and legal basis of these deployments has varied considerably, and the record of accountability for human rights violations committed in the course of internal security operations is patchy at best.

Operation Clean Heart, which resulted in scores of deaths in custody attributed to the deployed military forces and which was subsequently covered by a broad indemnity enacted by Parliament, provides the most instructive case study in the legal and constitutional dimensions of internal security operations. The operation deployed military forces across the country to arrest suspected criminals and was characterised by numerous credible reports of extrajudicial killings and deaths in custody. The parliamentary indemnity that was subsequently enacted shielded the forces involved from prosecution, but it did not resolve the underlying constitutional questions about the legitimacy of the operation, the adequacy of the legal framework governing it, or the accountability for the deaths that occurred.

For the Bangladesh Air Force, internal security operations most commonly take the form of air support to law enforcement, aerial surveillance of areas of unrest or suspected criminal activity, transport of personnel and equipment in support of ground forces, and in extreme cases, the use of aircraft-mounted weapons systems. Each of these activities has distinct legal requirements and limitations that derive from the constitutional framework, the applicable domestic legislation, and where relevant, international human rights law.

85.2 International Human Rights Law and Internal Security Operations

International human rights law applies to all operations of state forces within their own territory, including military forces conducting internal security operations. This is a point that is sometimes overlooked or contested in the context of discussions of military law, where the focus is often on IHL and the law of armed conflict. But IHL applies only in situations of armed conflict, and many internal security operations do not rise to the threshold of non-international armed conflict. In these situations, the applicable international legal framework is not IHL but international human rights law, including the International Covenant on Civil and Political Rights, to which Bangladesh is a party, and the relevant standards developed by the UN Human Rights Committee and other treaty bodies.

The most directly relevant human rights standards for internal security operations include the right to life under Article 6 of the ICCPR, the prohibition of torture and cruel, inhuman, or

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degrading treatment under Article 7, the right to liberty and security under Article 9, and the right to an effective remedy under Article 2(3). These rights apply to all persons within Bangladesh's jurisdiction, including in the context of internal security operations, and they impose specific legal obligations on military forces engaged in such operations.

The right to life, as interpreted by the UN Human Rights Committee, requires that deprivations of life by state forces be strictly necessary, proportionate to the legitimate aim pursued, and the result of a deliberate decision to use lethal force only as a last resort. This standard is significantly more restrictive than the IHL framework for lawful killing in armed conflict. In an internal security situation that does not rise to the level of armed conflict, a soldier who uses lethal force against a civilian must meet the human rights law standard, not the lower IHL standard for combatant targeting. Officers of the Bangladesh Air Force who are involved in internal security operations must understand this distinction and its practical implications for the rules under which they operate.

The 2025 Human Rights Watch report on Bangladesh, which reviewed the human rights standards applicable to the security forces' operations and raised concerns about accountability for past violations, including those documented in connection with the political events of 2024, is relevant to the framework within which Bangladesh Air Force personnel must understand their obligations in internal security contexts. The report's recommendations on the legal review of security force conduct, the accountability of military personnel for human rights violations, and the need to bring military justice mechanisms into alignment with international human rights standards directly address the institutional challenges that this handbook has identified throughout its analysis.

85.3 The Chittagong Hill Tracts Operations: A Case Study in the Legal Complexities of Counter-Insurgency

The operations conducted by Bangladesh's armed forces in the Chittagong Hill Tracts (CHT) during the insurgency waged by the Parbatya Chattagram Jana Samhati Samiti (JSS) and subsequently by the breakaway Pahari Gono Parishad (PGP) represent Bangladesh's most extensive and sustained experience with counter-insurgency operations, and they offer the most instructive case study available for understanding the legal dimensions of military operations in a domestic armed conflict context.

The CHT conflict, which began in the mid-1970s and was formally ended by the Peace Accord of December 1997, involved significant military operations including air operations by the Bangladesh Air Force, ground operations, and at certain periods, operations that human rights organisations documented as involving extrajudicial killings, forced displacement of civilian populations, and the burning of villages. The legal framework within which these operations were conducted, and the accountability for alleged violations that occurred in the course of them, remains a matter of historical and contemporary significance.

The CHT conflict raises the threshold question of whether the level of violence and the organisation of the armed groups involved was sufficient to constitute a non-international armed conflict to which IHL applied, or whether it remained below that threshold as an internal security

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situation governed primarily by domestic law and international human rights standards. The answer to this question has important implications for the applicable legal framework and for the accountability of security force personnel for their conduct. Contemporary IHL scholarship, including the criteria developed by the International Criminal Tribunal for the former Yugoslavia in the Tadic decision, suggests that at its height the CHT conflict likely satisfied the threshold of a non-international armed conflict, which would mean that Common Article 3 of the Geneva Conventions and customary IHL applicable to non-international armed conflicts applied to the operations of the Bangladesh armed forces.

If IHL applied, then the principles of distinction, proportionality, and precaution applied to all military operations in the CHT, including air operations. The documented forced displacement of civilian populations, if it occurred on the scale alleged and was directed at civilian communities rather than being an incidental consequence of legitimate military operations, would potentially constitute a serious violation of IHL as well as international human rights law. The accountability for these alleged violations, including the accountability of air force personnel who may have participated in or provided support for ground operations involving such conduct, is a question that has never been fully addressed by Bangladesh's domestic accountability mechanisms.

The 1997 Peace Accord brought formal hostilities to an end and provided for the return of displaced persons, the demobilisation of insurgents, and the establishment of new governance structures for the CHT region. The implementation of the Accord has been incomplete and contested, and residual tensions in the region continue. The legal lessons of the CHT conflict, including the importance of clear rules of engagement, robust legal advisory capacity within operational commands, effective accountability mechanisms for violations, and the critical role of distinguishing military operations from collective punishment of civilian communities, remain directly relevant to any future internal security operations in which the Bangladesh Air Force might be involved.

CHAPTER EIGHTY-SIX: THE LEGAL FRAMEWORK FOR CYBER OPERATIONS: IHL, SOVEREIGNTY, AND THE NEW OPERATIONAL DOMAIN

86.1 Cyber Operations and the Bangladesh Air Force: Why This Matters

Cyber operations have become one of the most significant and rapidly evolving dimensions of contemporary military strategy. The ability to disrupt, degrade, or destroy an adversary's information systems, communications networks, air defence networks, and critical infrastructure through cyber means has transformed the character of both armed conflict and strategic competition below the threshold of armed conflict. For the Bangladesh Air Force, whose operational effectiveness depends critically on sophisticated communications, navigation, radar, weapons systems, and maintenance information systems, the cyber domain is both a potential arena of offensive operations and a critical vulnerability requiring defensive protection.

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The Air Force Act of 1953 was not designed with cyber operations in mind, and its provisions do not directly address the legal framework for offensive or defensive cyber operations by the Bangladesh Air Force. The development of a comprehensive legal framework for cyber operations, drawing on international law, domestic legislation, and service-specific guidance, is one of the most urgent institutional requirements for any contemporary air force. This chapter addresses the international legal framework for cyber operations, the specific implications for Bangladesh, and the institutional requirements for developing an adequate operational legal framework.

86.2 International Law and Cyber Operations: The Tallinn Manual Framework

The most comprehensive and authoritative articulation of international law applicable to cyber operations is the Tallinn Manual on the International Law Applicable to Cyber Warfare, produced by an expert group convened by the NATO Cooperative Cyber Defence Centre of Excellence. The original Tallinn Manual, published in 2013, addressed international law applicable to cyber warfare, meaning cyber operations conducted in the context of armed conflict. Tallinn Manual 2.0, published in 2017, extended the analysis to cyber operations conducted below the threshold of armed conflict, addressing the full range of international legal questions that cyber operations raise including questions of sovereignty, non-intervention, state responsibility, and human rights law.

The Tallinn Manual is not itself a binding legal instrument; it is the product of academic expert analysis rather than state agreement. But it represents the most thorough and systematic application of established principles of international law to the cyber domain, and it is widely used as a reference by governments, military legal advisers, and international organisations engaged with cyber law questions. For the Bangladesh Air Force's legal advisers, familiarity with the Tallinn Manual's framework is an essential professional requirement.

The foundational question of international cyber law is whether a particular cyber operation constitutes a "use of force" within the meaning of Article 2(4) of the UN Charter, which prohibits states from threatening or using force against the territorial integrity or political independence of another state. If a cyber operation constitutes a use of force, the legal framework applicable to the jus ad bellum applies, including the prohibition of aggressive use of force and the right of the targeted state to use force in self-defence. If a cyber operation does not reach the use of force threshold, it may still violate international law through the principle of sovereignty or the prohibition of intervention in another state's domestic affairs, but the targeted state cannot respond with armed force in self-defence.

The Tallinn Manual's analysis concludes that cyber operations that in their effects are equivalent to kinetic uses of force, because they cause physical damage to property or injury or death to persons, should be classified as uses of force under the UN Charter. A cyber attack that disables an adversary's air defence network, causing aircraft to be shot down because they cannot be identified as friendly, would almost certainly qualify as a use of force. A cyber operation that disrupts an adversary's logistics systems or degrades the accuracy of its weapons systems without causing direct physical damage is in a more ambiguous legal category that continues to be debated.

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The question of what constitutes an "armed attack" in the cyber context, which is legally significant because it determines when a state may exercise the right of self-defence under Article 51 of the UN Charter, is even more contested. The standard view is that an armed attack requires a certain scale and severity of harm, and that minor cyber intrusions, even if they are illegal violations of sovereignty, do not rise to the level of armed attack justifying forceful self-defence. But the threshold between a mere violation of international law and an armed attack is not clearly defined in treaty law, and state practice in the cyber domain is still developing.

For the Bangladesh Air Force, the most operationally relevant question of cyber law is whether specific cyber operations that the air force might conduct against an adversary's air defence, communications, or weapons systems would be lawful under international law, and what precautions are required to ensure that any cyber operations conducted comply with the principles of IHL. The Tallinn Manual's analysis suggests that cyber operations intended to cause effects within the territory of another state implicate the full range of IHL obligations, including the principles of distinction, proportionality, and precaution, if they are conducted in the context of an armed conflict.

86.3 The Principle of Distinction Applied to Cyber Operations

The application of the principle of distinction to cyber operations creates challenges that have no clear parallel in the kinetic domain. The principle of distinction requires that attacks be directed only against military objectives, meaning objects that make an effective contribution to military action and whose destruction offers a definite military advantage. In the cyber domain, the distinction between military and civilian infrastructure is frequently blurred: the internet itself is civilian infrastructure used for military purposes. Communications networks serve both military and civilian users. Power grids that support military facilities also power hospitals and civilian residences. The concept of dual-use objects, which is complex even in kinetic targeting, becomes extraordinarily difficult to manage in the cyber context.

A cyber operation targeting an adversary's air defence radar network, for example, might use civilian internet infrastructure to deliver the attack, might affect not only military radar systems but also civilian air traffic control systems, and might have cascading effects on civilian aviation safety that are difficult to predict or control. The principle of distinction would require that the operation target only the military radar systems and take all feasible precautions to avoid affecting civilian systems, but the technical realities of how networked systems are interconnected may make it impossible to guarantee that the operation will not have civilian effects.

The precaution requirement in the cyber context therefore demands a level of technical specificity in the design of cyber weapons and cyber operations that exceeds what was contemplated in the drafting of Additional Protocol I. Cyber weapons must be designed and deployed with specific consideration of the foreseeable civilian effects of the operation, and operations must be modified or cancelled if those effects would be excessive in relation to the military advantage anticipated. This requires the integration of technical expertise about the architecture and interconnections of targeted systems with legal expertise about the IHL requirements, in a manner that is institutionally demanding but legally necessary.

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The ICRC's 2024 Challenges Report specifically identified cyber operations, information operations, and other digital threats as among the pressing challenges for contemporary IHL, noting that the integration of AI, autonomous systems, and cyber capabilities into military operations raises complex questions about accountability and compliance with IHL principles. For the Bangladesh Air Force, as it develops capabilities in the cyber domain, these challenges are not abstract: they are operational realities that require institutional preparation.

86.4 Defending Against Cyber Attacks: Legal Aspects of Cyber Defence

The Bangladesh Air Force's most immediate cyber law concern is likely to be the defence of its own systems against cyber attacks from state or non-state adversaries. The legal aspects of cyber defence include both the authority to take defensive measures and the limits on defensive measures that might cross into offensive cyber operations against the attacker's systems.

The right of self-defence under both domestic and international law clearly extends to defensive cyber measures that prevent or mitigate ongoing cyber attacks. Defensive measures that block, filter, or disable incoming attack vectors are unambiguously lawful under any applicable legal framework. The legal complexity arises when defensive measures become active in the sense of reaching back into the attacker's systems, disrupting the attacker's infrastructure, or identifying and targeting the source of an attack. These "hack back" operations may be permissible in certain circumstances as proportionate responses to ongoing attacks, but they carry significant legal risks and require specific legal authorisation and oversight.

For Bangladesh Air Force cyber operations, the domestic legal framework for authorising defensive cyber measures needs to be clearly developed. The Air Force Act's general framework of command authority provides a foundation, but the specific authorities and limitations applicable to cyber defensive operations, including the approval levels required for various categories of action and the procedures for legal review, need to be articulated in service-specific doctrine and regulation. The absence of clear doctrine in this area is itself a legal risk: it creates uncertainty about the authority of commanders to take defensive action and may result in either insufficient response to attacks or response measures that exceed lawful authority.

86.5 Artificial Intelligence in Air Operations: Legal Implications

The integration of artificial intelligence into military aviation, including into targeting support systems, threat assessment, navigation, and flight management, is one of the most significant technological developments affecting the Bangladesh Air Force's operational and legal environment. AI-enabled systems offer significant potential advantages in processing speed, data integration, and decision support, but they also raise profound legal questions about accountability, compliance with IHL, and the limits of autonomous decision-making in lethal contexts.

The most important legal principle in this domain is the requirement for meaningful human control over lethal force decisions. Both the ICRC and a growing body of state opinion hold that IHL requires meaningful human control over targeting decisions, meaning that a human being must exercise genuine judgment, informed by adequate information and understanding, in

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making the decision to use lethal force. AI systems that support this decision by providing data, analysis, and recommendations are legally and ethically different from AI systems that make targeting decisions autonomously without real-time human oversight.

For Bangladesh Air Force operations, the legal implications of AI integration depend critically on the specific functions that AI systems perform. An AI system that processes radar data and presents targeting recommendations to a pilot who then exercises independent judgment about whether to act on those recommendations is a decision support system that does not eliminate the human control requirement. An AI system that autonomously identifies and engages targets without human oversight in the engagement loop is an autonomous weapons system that raises much more serious legal concerns. The distinction between these two categories, and the institutional and technical requirements for ensuring that AI systems deployed by the Bangladesh Air Force remain in the first category, is a legal priority that deserves immediate attention.

CHAPTER EIGHTY-SEVEN: AUTONOMOUS WEAPONS SYSTEMS AND THE BANGLADESH AIR FORCE: THE LEGAL FRONTIER

87.1 Defining Autonomous Weapons Systems in the Legal Context

The development and potential deployment of autonomous weapons systems represents the most philosophically and legally challenging frontier in contemporary military law. The ICRC defines autonomous weapons systems as weapons that, once activated, can select and engage one or more targets without further human intervention. This definition focuses on the targeting function as the critical element of autonomy: a system that autonomously navigates but whose targeting decision is made by a human operator is different, for legal purposes, from a system that autonomously both navigates and selects and engages targets.

The legal debates surrounding autonomous weapons systems are concentrated on several core questions. The first is whether AWS can comply with IHL's core principles of distinction and proportionality in the complex and unpredictable environments of actual armed conflict. The second is whether the removal of human judgment from the targeting decision eliminates the possibility of effective accountability for IHL violations. The third is whether any level of autonomous targeting is inherently incompatible with the moral demands of the laws of war, regardless of technical capability. These three questions are analytically distinct but practically interconnected.

A landmark paper published in July 2025 in the journal Defence and Peace Economics argued that AWS fundamentally undermine moral accountability in armed conflict. The paper's central thesis is that IHL assumes human judgment as the locus of responsibility, and that the introduction of autonomous targeting dissolves the link between moral agency and lethal outcomes in a way that is inherently incompatible with the moral architecture of armed conflict. This argument connects directly to the just war theoretical framework: the principle of discrimination requires not merely that the right targets are hit but that the decision to hit them is made by a moral agent who bears responsibility for that decision.

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On the technical side, a 2024 study by Torregrosa-Dominguez and colleagues found that computer vision systems for combatant identification, the core technical capacity required for an AWS to comply with the principle of distinction, achieve only 70 to 85 percent accuracy in complex environments where civilians are present alongside combatants. This level of accuracy, which might be acceptable for many commercial applications, is profoundly inadequate for lethal targeting decisions where errors result in the unlawful killing of civilians. The study's findings support the ICRC's position that the current generation of AI-enabled targeting systems cannot reliably comply with IHL's requirements in complex combat environments.

87.2 The International Regulatory Landscape for Autonomous Weapons: 2024 to 2026 Developments

The international debate over the regulation of autonomous weapons systems has intensified considerably in the period from 2024 to 2026, with growing momentum toward new international legal instruments. The Convention on Certain Conventional Weapons (CCW), which has been the primary multilateral forum for discussions on AWS, has been criticised by civil society organisations and a number of states for insufficient progress toward binding regulation. In response to this frustration with the CCW process, the UN General Assembly passed a resolution in late 2023 calling for informal consultations among member states on AWS in 2025, drawing on the CCW Group of Governmental Experts' work.

The American Society of International Law's authoritative analysis, published in January 2025, identified a growing body of state consensus around several key principles for AWS regulation: that AWS require context-appropriate human control and judgment to ensure compliance with IHL; that human operators, commanders, and superiors remain accountable under IHL for the use of AWS; that AWS must be capable of distinguishing between civilians and combatants to comply with the principle of distinction; and that AWS must be able to assess proportionality in the specific circumstances of an attack.

The Lieber Institute at West Point published a major analysis in March 2026 noting that the rapid rise of AI-driven autonomous weapons was putting real pressure on the core IHL principles of distinction, proportionality, and precaution, and that accountability remained exceptionally difficult to establish because criminal liability systems were never designed to deal with actions carried out by machines. The analysis noted that the opacity of modern AI systems made it extremely difficult to trace responsibility for errors, undermining both deterrence and enforcement. These observations are directly relevant to Bangladesh's legal framework for evaluating and potentially deploying AWS capabilities.

The ICRC's updated position paper on autonomous weapons and IHL, noting the divergence of state views about what existing IHL permits and prohibits in relation to AWS, concluded in 2025 that new rules are urgently needed to clarify and specify how IHL applies to AWS and to prohibit certain categories of autonomous targeting that cannot be used in compliance with IHL. The ICRC called for prohibitions on AWS that function in circumstances where they cannot comply with IHL, AWS that cause effects that cannot be limited as required by IHL, and AWS that preclude attribution of legal responsibility for violations.

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For Bangladesh, which is not among the major military powers developing advanced autonomous weapons systems, the primary legal and policy concern in this domain is ensuring that its military doctrine and legal framework incorporate the constraints on AWS deployment that international law requires and that Bangladesh's values as a contributor to international peace demand. Bangladesh's constitutional commitment to international peace and cooperation, and its reputation as a responsible peacekeeping contributor, support a cautious and conservative approach to autonomous weapons that prioritises human control over operational convenience.

87.3 The Article 36 Weapons Review Obligation and Bangladesh Air Force Acquisitions

Article 36 of Additional Protocol I to the Geneva Conventions requires that in the study, development, acquisition, or adoption of a new weapon, means, or method of warfare, states are under an obligation to determine whether its employment would, in some or all circumstances, be prohibited by international law. This weapons review obligation applies to all new weapons, including autonomous weapons systems, AI-enabled targeting systems, and any other technological capability that the Bangladesh Air Force might acquire.

The Article 36 review process requires a legal assessment of whether the proposed weapon system can be used in compliance with IHL in the circumstances of its intended use. For conventional weapons, this assessment focuses on questions such as whether the weapon is inherently indiscriminate, whether it causes superfluous injury or unnecessary suffering, and whether its effects can be limited as required by IHL. For AWS and AI-enabled systems, the review must additionally address the questions of meaningful human control, technical reliability in discrimination between civilians and combatants, the algorithmic basis for proportionality assessments, and the accountability framework for system failures.

Bangladesh does not have a publicly documented formal Article 36 review process for weapons acquisition. The development of such a process, institutionalised within the Bangladesh Air Force's acquisition and operational planning structures, is an important legal and institutional priority. The process should include a formal legal review component, conducted by the judge advocate's office, as part of the evaluation of any new weapons system or AI-enabled capability. The review should assess compliance with IHL, consider any relevant international discussions about the system's regulation, and produce a documented legal opinion that is retained as part of the acquisition record.

CHAPTER EIGHTY-EIGHT: SPACE OPERATIONS AND THE LAW: THE EMERGING FRONTIER FOR MILITARY AVIATION

88.1 Military Space Operations and Their Legal Framework

Space has become an operational domain of direct and growing relevance to military aviation. The Bangladesh Air Force, like all modern air forces, depends on space-based capabilities for navigation through the Global Navigation Satellite System, for communications through military and commercial satellite links, for meteorological support, and increasingly for intelligence,

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surveillance, and reconnaissance through satellite imagery. The legal framework governing the use of space for military purposes is therefore directly relevant to the Bangladesh Air Force's operational activities.

The foundational treaty of space law is the 1967 Outer Space Treaty (OST), which establishes the fundamental principles governing the use of outer space by states. The OST declares that outer space, including the moon and other celestial bodies, is not subject to national appropriation by claim of sovereignty, use, occupation, or any other means. It requires that space activities be carried out for the benefit and in the interest of all countries. And it prohibits the placement of nuclear weapons or other weapons of mass destruction in orbit or on celestial bodies. Significantly, the OST does not prohibit conventional weapons in space or the use of space for military purposes generally; it is therefore not accurate to characterise space as a weapons-free zone under international law.

The military use of space is extensive and well-established in the practice of major military powers. Reconnaissance satellites, military communications satellites, and navigation satellites serve military purposes that are not prohibited by the OST. The development of active anti-satellite (ASAT) weapon systems, which can destroy or disable adversary satellites, is the most sensitive area of military space law. The destruction of a satellite creates debris fields that persist in orbit for extended periods and pose risks to all space users, military and civilian alike. A number of states, including China in 2007 and India in 2019, have tested ASAT weapons, creating debris that has drawn international criticism.

The 2024 ICRC Challenges Report specifically identified outer space as an emerging area of humanitarian concern, noting that the increasing military use of space and the potential for attacks on space-based infrastructure posed risks to civilian populations who depend on space-based services for communications, navigation, financial systems, and emergency response. The Report called for the development of specific rules governing military operations in outer space that reflect the humanitarian concerns raised by attacks on space infrastructure.

88.2 IHL and Space Operations: The Application of Existing Principles

The question of whether and how IHL applies to military operations in space is actively debated. The traditional view held that space is too distant from the battlespace to be meaningfully regulated by IHL. The contemporary view, reflected in the Woomera Manual on the International Law of Military Space Operations published in 2020 by an expert group, holds that IHL principles apply to military space operations in the same way that they apply to other military operations: the principles of distinction, proportionality, and precaution govern attacks on space-based objects just as they govern attacks on terrestrial targets.

The application of the principle of distinction to space operations requires the characterisation of satellites and other space objects as either military objectives or civilian objects. A military communications satellite is clearly a military objective. A commercial satellite providing services to both military and civilian users is a dual-use object whose targeting requires the same careful analysis as the targeting of dual-use terrestrial infrastructure. A civilian navigation satellite whose disruption would affect both military and civilian users raises the most complex

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questions, because the civilian users of satellite navigation systems include hospitals, emergency services, aviation, and other critical infrastructure, and the disruption of satellite navigation could cause widespread and serious harm to the civilian population.

The precaution principle applied to space operations requires that attacks on space objects be planned and conducted in ways that minimise harmful debris and avoid effects on the space environment that would cause long-term harm to all space users. This is a specific and important extension of the precaution principle to the space environment: a debris-creating ASAT attack may be judged militarily necessary against a specific satellite but may create long-term hazards that affect all states' ability to use space, including for humanitarian purposes. The principle of precaution requires that this broader harm be taken into account.

For the Bangladesh Air Force, space law considerations are relevant primarily in the defensive context: ensuring the resilience of the space-based services on which operational capability depends, and understanding the legal framework within which adversary interference with those services might be addressed. Bangladesh does not currently have offensive anti-satellite capabilities, and the development of such capabilities would raise extremely serious legal and policy questions that would require the most careful legal analysis.

CHAPTER EIGHTY-NINE: ACCOUNTABILITY FOR OPERATIONAL DECISIONS: COMMAND RESPONSIBILITY AND INDIVIDUAL LIABILITY

89.1 The Doctrine of Command Responsibility: Historical Development and Contemporary Application

The doctrine of command responsibility is one of the most significant contributions of the Nuremberg Tribunals and the subsequent development of international criminal law to the accountability framework for military operations. It holds that military commanders are criminally responsible not only for their own acts and those they directly order but also for the acts of their subordinates when certain conditions are met. Understanding command responsibility is essential for every officer in a position of command authority in the Bangladesh Air Force, because it means that commanders bear legal accountability for how their subordinates conduct operations.

The doctrine was first clearly articulated in the post-Second World War trials, most importantly in the In re Yamashita case decided by the United States Supreme Court in 1946, which held that a military commander has an affirmative duty to take such measures as are within his power and appropriate to the circumstances to protect prisoners of war and the civilian population, and that failure to take such measures when he knew or should have known that his subordinates were committing atrocities constitutes a war crime. The principle was subsequently developed and refined in the jurisprudence of the International Criminal Tribunals for the former Yugoslavia and Rwanda, and it is now codified in Article 28 of the Rome Statute of the International Criminal Court.

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Under the Rome Statute's formulation, a military commander is criminally responsible for crimes within the ICC's jurisdiction committed by forces under his effective command and control when the commander either knew or, owing to the circumstances at the time, should have known that the forces were committing or about to commit such crimes, and the commander failed to take all necessary and reasonable measures within his or her power to prevent or repress their commission or to submit the matter to the competent authorities for investigation and prosecution.

The application of the command responsibility doctrine to air operations raises specific questions. The chain of command in air operations is often extended and complex, with aircraft commanders, squadron commanders, wing commanders, and operational commanders at multiple levels all potentially bearing responsibility for the legality of operations. The specific question of who had "effective command and control" over particular operations, what information was available at what level of the chain of command, and what measures could reasonably have been taken to prevent violations, all require case-specific analysis.

89.2 Individual Criminal Responsibility Under International Criminal Law

Individual criminal responsibility under international criminal law provides the ultimate accountability framework for the most serious violations of IHL committed in the course of military operations. The Rome Statute of the ICC defines war crimes as grave breaches of the Geneva Conventions and other serious violations of IHL committed in international armed conflicts, as well as serious violations of Common Article 3 and IHL applicable to non-international armed conflicts. The specific war crimes most relevant to air operations include the intentional attack on civilian populations, the intentional attack on civilian objects, the intentional launch of a disproportionate attack, and the attack on undefended places.

Bangladesh is not currently a party to the Rome Statute, which means that the ICC does not have automatic jurisdiction over war crimes committed by Bangladeshi nationals or on Bangladeshi territory. However, the ICC may exercise jurisdiction if the Security Council refers a situation to the Court, or if a non-member state voluntarily accepts the Court's jurisdiction for specific situations. The absence of ICC jurisdiction does not mean, however, that Bangladeshi nationals are immune from accountability for war crimes under international law. The principle of universal jurisdiction permits states to prosecute certain international crimes regardless of where they were committed and regardless of the nationality of the perpetrator or victim, and the Bangladeshi criminal courts have jurisdiction over international crimes under domestic legislation.

89.3 The Domestic Accountability Framework for Operational Decisions

The Bangladesh Air Force Act provides the primary domestic legal framework for the accountability of air force personnel for conduct in the course of military operations. The Act's specific offence provisions, analysed in detail in Part Five of this handbook, address a range of conduct relevant to operational accountability, including disobedience of orders, misconduct in the face of the enemy, and general conduct to the prejudice of good order and military discipline. But the Act's framework is not designed specifically for the accountability of command decisions

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in the context of IHL compliance, and it does not adequately address the specific legal requirements that command responsibility doctrine and international criminal law impose.

The most significant gap in the domestic accountability framework is the absence of specific domestic legislation criminalising war crimes and crimes against humanity in a form that would enable the domestic prosecution of Bangladeshi armed forces personnel for such conduct. While the Bangladesh International Crimes Tribunal Act provides a framework for prosecuting such crimes in relation to the 1971 liberation war, its provisions are not well-suited to addressing crimes committed by current armed forces personnel in the course of contemporary operations. The development of comprehensive domestic legislation on war crimes and crimes against humanity, consistent with the Rome Statute and applicable to all military operations, is an important element of the legal reform agenda for Bangladesh's military justice system.

89.4 Protecting the Integrity of Operational Accountability: The Role of Legal Advisers

The effective accountability framework for operational decisions in the Bangladesh Air Force requires an institutional structure that supports legal compliance from the planning stage through the post-incident review stage. The judge advocate's office plays a central role in this framework, but its effectiveness depends on both its institutional authority and the professionalism and legal capacity of the judge advocates who fill it.

The integration of legal advisers into operational planning should be treated as a non-negotiable institutional requirement rather than an optional addition to the operational staff. Before any operation involving the use of force is authorised, the judge advocate should have reviewed and provided a written legal opinion on the applicable legal framework, the rules of engagement, the targeting analysis, and any specific legal concerns raised by the planned operation. This opinion should be available to the authorising commander and should be retained in the operational record.

Post-incident review of operations that result in civilian casualties or other potentially legally significant outcomes should include a systematic legal review conducted by the judge advocate's office, in addition to any operational or safety review. The legal review should assess compliance with the applicable legal framework, identify any potential violations, and recommend appropriate follow-up action, which may include referral to the military justice system, referral to civilian authorities, or a determination that no violation occurred. The legal review should be documented and should be accessible, in appropriately redacted form, for oversight purposes.

CHAPTER NINETY: THE POLITICS OF MILITARY OPERATIONS: CIVILIAN CONTROL, DEMOCRATIC ACCOUNTABILITY, AND THE OPERATIONAL DIMENSION

90.1 The Political Dimension of Operational Authority

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Military operations are not solely a matter of law and tactics. They are profoundly political acts, because the decision to use military force is one of the most consequential decisions that any government makes, with potentially irreversible consequences for international relations, civilian populations, and the constitutional order. The relationship between the political authority of the elected government and the operational authority of the military chain of command in the conduct of operations is one of the most sensitive and important dimensions of civil-military relations.

In Bangladesh, the constitutional framework for the exercise of operational authority is established by the provisions of the Constitution vesting supreme command of the defence services in the President and requiring that executive authority be exercisable on the advice of the Prime Minister. This means that the decision to deploy the Bangladesh Air Force in operations, including in armed conflict, internal security, and peacekeeping, is ultimately a political decision made by the elected civilian government, not a military decision made by the military chain of command. The operational authority of military commanders is derivative of this political authority, not independent of it.

The practical implementation of civilian control of military operations in Bangladesh has been complicated by the country's history of military governance and the persistence of institutional patterns from the periods of military rule. The specific mechanisms through which civilian political authority translates into operational command decisions, including the procedures for authorising specific operations, defining operational objectives, approving rules of engagement, and reviewing the conduct of operations, are areas where clearer institutional frameworks and greater transparency would strengthen both civilian control and military accountability.

90.2 Parliamentary Oversight of Military Operations

The parliamentary dimension of operational accountability is underdeveloped in Bangladesh. Most democratic states provide for parliamentary oversight of military operations through dedicated defence committees with access to classified information, reporting requirements for the executive on military deployments, and in some cases formal parliamentary authorisation requirements for specific categories of military action. Bangladesh's National Assembly has defence committees, but their operational effectiveness in providing meaningful oversight of military operations is limited by both institutional design and political culture.

Strengthening parliamentary oversight of military operations is important for several reasons. First, democratic legitimacy requires that the decision to deploy military force be accountable to the elected representatives of the people. Second, meaningful oversight creates institutional incentives for legal compliance, because commanders who know that their decisions may be scrutinised by parliamentary bodies with access to accurate information are more likely to ensure that those decisions meet legal standards. Third, parliamentary oversight provides a mechanism for identifying systemic problems in the conduct of operations and for requiring institutional reform.

The specific oversight mechanisms most relevant to air force operations include parliamentary authority to review the rules of engagement under which operations are conducted, access to

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post-incident review reports on operations resulting in civilian casualties or other legally significant outcomes, the ability to question the Chief of Air Staff and other senior air force officers on operational matters, and in extreme cases, the ability to require the production of documents and information relevant to specific incidents.

90.3 The Relationship Between Operational Law and Foreign Policy

The legal framework governing military operations does not exist in isolation from the broader foreign policy context within which those operations occur. Bangladesh's participation in UN peacekeeping operations is itself a foreign policy instrument, reflecting the government's commitment to international peace and its strategic interest in maintaining the credibility and international standing that peacekeeping contributions generate. The conduct of Bangladesh Air Force peacekeeping operations, including the legal standards maintained, the accountability mechanisms applied, and the response to allegations of misconduct, all have direct foreign policy implications.

Similarly, the development of Bangladesh's operational law doctrine, its approach to IHL compliance, and its engagement with international discussions on emerging issues such as autonomous weapons and cyber operations, all reflect and affect Bangladesh's position in the international community. A Bangladesh that maintains high standards of IHL compliance, contributes actively to international discussions of emerging legal issues, and maintains robust accountability mechanisms for operational conduct is a Bangladesh that enhances its soft power and diplomatic standing. A Bangladesh whose forces are associated with IHL violations or whose accountability mechanisms fail to address misconduct effectively is a Bangladesh whose diplomatic position is weakened and whose international credibility is damaged.

The foreign policy dimension of operational law creates responsibilities that go beyond legal compliance in the narrow sense. It requires active engagement with the development of international law in relevant forums, including the CCW discussions on autonomous weapons, the UN discussions of peacekeeping standards, and the ICRC's processes for developing guidance on emerging IHL issues. Bangladesh's position as a major peacekeeping contributor gives it a significant voice in these discussions, and exercising that voice actively and constructively serves both Bangladesh's national interest and the broader interest of the international legal order.

CHAPTER NINETY-ONE: THE REFORM AGENDA FOR OPERATIONAL LAW IN THE BANGLADESH AIR FORCE

91.1 Identifying the Gaps in the Current Operational Legal Framework

The analysis in the preceding chapters of Part Six has identified a number of significant gaps in the Bangladesh Air Force's operational legal framework. These gaps reflect the combination of the Air Force Act's 1953 origins, the incomplete reception of international legal developments into Bangladesh's domestic military law, and the absence of systematic institutional investment

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in operational law capacity. Addressing these gaps is one of the most important contributions that legal reform could make to the effectiveness, professionalism, and legal standing of the Bangladesh Air Force.

The most significant identified gaps include, first, the absence of specific domestic legislation comprehensively criminalising war crimes, crimes against humanity, and related violations of IHL, applicable to all military operations. The existing framework relies on a combination of general criminal law provisions, the Air Force Act's civil offences mechanism, and the specific International Crimes Tribunal framework that was designed for a different purpose. A comprehensive war crimes statute would provide a clear, specific, and domestically grounded accountability framework for operational conduct.

The second gap is the absence of formal, institutionalised weapons review procedures under Article 36 of Additional Protocol I. The acquisition of new weapons systems and capabilities, including AI-enabled targeting systems, autonomous systems, and cyber capabilities, must be subject to rigorous legal review before adoption. The absence of a formalised review process creates both legal risk and institutional vulnerability.

The third gap is the absence of specific doctrine and rules of engagement for cyber operations. As the Bangladesh Air Force develops capabilities in the cyber domain, both offensive and defensive, the legal framework governing the exercise of those capabilities must be developed in parallel. Operational capability without legal framework is both legally dangerous and ethically irresponsible.

The fourth gap is the inadequate institutionalisation of the judge advocate function in operational planning. Legal advisers need to be systematically integrated into the operational planning process at all levels, with defined roles, clear authority to provide binding legal opinions, and the institutional status required to influence command decisions.

The fifth gap is the inadequate framework for accountability of operational conduct, including both the domestic criminal law framework and the oversight mechanisms that ensure that legal compliance is effectively monitored and enforced. Strengthening this framework requires both legislative reform and institutional development.

91.2 Building Operational Law Capacity: Education, Training, and Institutional Development

The development of robust operational law capacity in the Bangladesh Air Force requires sustained investment in three interconnected areas: education, training, and institutional development.

The educational dimension requires that all officers of the Bangladesh Air Force, from the earliest stages of their professional education, receive substantive instruction in the law of armed conflict, IHL, rules of engagement, and the legal framework for peacekeeping operations. This instruction should not be a single introductory course but should be integrated throughout the professional military education curriculum, deepening in sophistication as officers advance in

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rank and responsibility. The instruction should emphasise not merely the technical rules but the philosophical foundations of IHL and the moral dimensions of operational conduct, developing the practical wisdom that effective compliance requires.

The training dimension requires that operational exercises and simulations systematically incorporate realistic legal scenarios that test officers' application of operational law principles under conditions that simulate the pressure and ambiguity of actual operations. Legal advisers should participate actively in command post exercises, providing the same kind of legal input that they would provide in actual operations and being evaluated on the quality and timeliness of their advice. The realistic simulation of legal challenges in training is essential for developing the institutional capacity to manage them effectively in operations.

The institutional development dimension requires attention to the structure, staffing, and authority of the judge advocate function within the Bangladesh Air Force. The judge advocate's office should be staffed with officers who are not merely legally qualified but are specifically trained in military operational law, IHL, and the specific legal dimensions of air operations. The office should be adequately resourced to maintain the specialised expertise that operational law requires, including expertise in cyber law, space law, autonomous weapons regulation, and international peacekeeping law. And the office should have clear institutional authority to provide legal opinions on operational matters, to participate in targeting decisions, and to initiate legal reviews of operational conduct.

91.3 The Comparative Perspective: Learning from the Experience of Allied Air Forces

The Bangladesh Air Force is not alone in confronting the challenges of developing an adequate operational legal framework for a contemporary air force. The experience of air forces from other democratic states, particularly those that have invested heavily in operational law capacity, provides valuable models and lessons.

The United States Air Force has developed one of the most sophisticated operational law systems of any air force in the world, with judge advocates embedded in operational units at all levels, specialised training in targeting law, rules of engagement, and cyber law, and a robust institutional framework for pre-mission legal review and post-incident accountability. The US Air Force's Judge Advocate General School at Maxwell Air Force Base provides graduate-level education in military law with a strong emphasis on operational legal issues, and its graduates serve in operational units around the world. The US experience demonstrates that operational law capacity is not merely a luxury but a fundamental requirement for a professional air force committed to the rule of law.

The United Kingdom's approach to operational law, developed through its experience in Iraq, Afghanistan, and other recent operations, has emphasised the importance of pre-operational legal review of targeting authorities, the provision of real-time legal advice during operations, and robust post-incident accountability mechanisms. The UK's publication of detailed legal guidance on targeting law and rules of engagement, while protecting operationally sensitive details, has contributed to the transparency and accountability of UK air operations. The UK's experience also illustrates the reputational value of demonstrated legal compliance: the UK's commitment to

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IHL has been a diplomatic asset in multilateral operations and in maintaining the international legitimacy of its military activities.

Canada's contribution to the development of military justice reform, including the Supreme Court of Canada's April 2024 decision in R v Edwards confirming the constitutional requirement of judicial independence for military judges, provides an important model for the reform of military justice systems generally, including the judicial dimensions of operational accountability. The Canadian Armed Forces' extensive experience in UN peacekeeping, combined with its sophisticated operational law framework, offers particularly relevant lessons for Bangladesh as the world's largest peacekeeping contributor.

The collective experience of these air forces confirms several key lessons: that operational law capacity is an investment in both legal compliance and operational effectiveness; that the integration of legal advisers into operational planning at all levels is essential and not merely an optional extra; that the education and training of all officers in operational law fundamentals is a prerequisite for institutional compliance; and that the development of specific doctrine for emerging legal domains, including cyber, space, and autonomous systems, cannot wait until those capabilities are fully operational.

CHAPTER NINETY-TWO: THE INTERNATIONAL CRIMES TRIBUNALS ACT AND ITS INTERACTION WITH THE AIR FORCE ACT

92.1 The Bangladesh International Crimes Tribunal: Jurisdiction and Its Relevance to Air Force Operations

The Bangladesh International Crimes Tribunal, established under the International Crimes (Tribunals) Act 1973 and amended as recently as November 2024, provides a mechanism for the prosecution of the gravest violations of international law, including genocide, crimes against humanity, and war crimes. The Tribunal's jurisdiction has principally been exercised in relation to events of the 1971 liberation war, but the statutory framework is not limited to historical events and could in principle be applied to contemporary violations of sufficient gravity.

The relationship between the Tribunal's jurisdiction and the jurisdiction of the military justice system under the Air Force Act is potentially complex. Where the same conduct might give rise to both a war crime charge before the Tribunal and a military offence charge under the Air Force Act, the question of which forum should exercise jurisdiction requires careful analysis. The principle against double jeopardy, which is constitutionally guaranteed under Article 35(2) of the Bangladesh Constitution, would generally prevent the prosecution of an individual in both forums for the same conduct. But the double jeopardy principle applies to successive prosecutions for the same offence, and a military offence under the Air Force Act is not necessarily the same offence as a war crime under the International Crimes Tribunals Act, even if both arise from the same conduct.

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The practical resolution of this jurisdictional overlap requires the development of clear prosecutorial guidelines specifying when conduct should be referred to the International Crimes Tribunal rather than being addressed through the military justice system. The general principle should be that the most grave violations of international law, particularly those that involve systematic or widespread harm to civilian populations, should be prosecuted before the International Crimes Tribunal, which has the jurisdiction, expertise, and authority to address them appropriately. Less grave violations that can be adequately addressed through the military justice system's framework should be prosecuted under the Air Force Act. And the development of close institutional coordination between the military justice system and the Tribunal's prosecutorial apparatus is necessary to ensure that this division of responsibility functions effectively in practice.

92.2 The 2024 Amendments to the International Crimes Tribunals Act and Their Implications

The November 2024 amendments to the International Crimes Tribunals Act, enacted in the context of Bangladesh's transition to the caretaker government following the political events of 2024, represent a significant development in the institutional framework for accountability for the gravest human rights violations. The amendments, which expanded the Tribunal's jurisdiction and strengthened certain procedural provisions, reflected both the domestic political context and the broader international human rights accountability framework within which Bangladesh operates.

From the perspective of Bangladesh Air Force law, the amendments are relevant in several respects. First, they demonstrate that the accountability framework for the most serious violations of international law is evolving and strengthening, creating a more robust legal environment for the accountability of military personnel who commit such violations. Second, they may affect the jurisdictional framework for the prosecution of air force personnel for conduct that falls within the Tribunal's extended jurisdiction. And third, they illustrate the broader dynamic by which international human rights developments influence domestic military law, a dynamic that this handbook has traced throughout its analysis.

The specific implications of the 2024 amendments for Bangladesh Air Force personnel will depend on the precise scope of the amendments' provisions and their application by the Tribunal in subsequent proceedings. Officers who are aware of the amendments and their potential scope are better positioned to understand the accountability framework within which they operate and to ensure that their conduct and the conduct of those under their command remains within the bounds of legality.

CHAPTER NINETY-THREE: THE PHILOSOPHY OF INTERNATIONAL HUMANITARIAN LAW: WHY THE RULES MATTER

93.1 The Sceptical Challenge: Does IHL Actually Constrain Military Conduct?

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One of the most persistent sceptical challenges to the law of armed conflict is the argument that the rules simply do not work: that states and non-state armed groups routinely violate IHL with impunity, that the accountability mechanisms are weak and inconsistently applied, and that the existence of a legal framework creates a false sense of security rather than genuine protection for the victims of war. This challenge, articulated in various forms by realist international relations theorists, critical legal scholars, and disillusioned practitioners, deserves serious engagement rather than dismissal.

The empirical basis for the sceptical challenge is real. The ICRC's 2024 Challenges Report noted that the United Nations recorded more than 36,000 civilian deaths in 14 armed conflicts in 2024 alone, with the real number likely far higher. The Report identified a deeply troubling trend of non-compliance with IHL across multiple conflict theatres and a systematic effort by some parties to exploit interpretive ambiguity in IHL to justify conduct that the law was designed to prohibit. The UN Security Council's May 2025 day-long debate on the protection of civilians concluded that the international framework for protecting civilians in armed conflict was itself under attack, with the Under-Secretary-General for Humanitarian Affairs describing the scaffolding built last century to protect us from inhumanity as crumbling.

These are serious indictments. But the sceptical conclusion that the law therefore does not matter is not logically compelled by the evidence of non-compliance. Law that is frequently violated is not necessarily law that has no effect. The relevant question is not whether IHL is always complied with but whether it constrains military conduct more than it would be constrained in its absence, whether it provides standards against which violations can be identified and accountability sought, and whether it shapes the expectations and practices of military institutions in ways that reduce harm even when compliance is imperfect.

The answer to these questions is almost certainly yes. Comparative analysis of conflicts in which well-trained, professionally led forces with strong IHL education operate against conflicts in which no such training or leadership is present shows substantial differences in civilian casualty rates and in the treatment of prisoners and protected persons. The Geneva Conventions' protections for prisoners of war, while frequently violated, have nonetheless protected millions of prisoners who might otherwise have been killed or abused. The prohibition of certain weapons, including chemical weapons, biological weapons, and anti-personnel land mines, has achieved significant effect in reducing the use of these weapons even by states that are not parties to the relevant treaties.

The Lieber Institute's analysis in March 2026 articulated the utilitarian case for operational law elegantly: clear legal guidance enhances operational effectiveness, conserves resources, and limits collateral damage. Law is not a panacea for the political and structural causes of armed conflict; it is one instrument among many designed to mitigate violence and guide state behaviour. The existence of violations does not negate the relevance of law. On the contrary, recognised standards are a prerequisite for identifying breaches, seeking redress, and promoting deterrence.

93.2 The Kantian and Consequentialist Foundations of IHL

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The philosophical foundations of IHL can be analysed from both Kantian deontological and consequentialist perspectives, and the richness of these complementary analyses illustrates the depth of the legal and moral framework within which military operations must be understood.

From a Kantian perspective, the principles of IHL, particularly the principle of distinction, reflect the Kantian imperative to treat humanity, whether in one's own person or in the person of another, always as an end and never merely as a means. Civilians who are not participating in hostilities are not instruments of the enemy's military power and must not be treated as such. The prohibition of targeting civilians reflects the recognition that these persons retain their full moral status as ends in themselves, regardless of their nationality, ethnicity, or location. The principle of distinction is, on this analysis, not merely a pragmatic rule for managing the humanitarian consequences of warfare but an expression of the fundamental moral recognition of human dignity.

The Kantian analysis also illuminates the prohibition of torture, the requirement of humane treatment of prisoners, and the protection of persons hors de combat. These rules cannot be justified purely on consequentialist grounds: there will always be specific cases where torture might produce useful information, or where killing a wounded combatant might reduce tactical risk. The Kantian justification for these absolute prohibitions is that treating a person in these ways is inherently incompatible with the recognition of their humanity and dignity, regardless of the consequences.

From a consequentialist perspective, IHL is justified by its contribution to reducing the overall harm caused by armed conflict, measured in lives saved, suffering reduced, and the long-term human costs of warfare minimised. The consequentialist analysis of IHL focuses on the systemic effects of legal compliance and violation: the contribution of consistent compliance to the norm of reciprocal restraint that protects all combatants, the effect of clear rules on the training and conduct of military forces, and the long-term contribution of accountability for violations to deterrence and the reinforcement of norms. The consequentialist analysis also supports the strategic arguments for IHL compliance: forces that comply with the law of armed conflict maintain the legitimacy necessary for effective operations, while forces associated with atrocities typically generate resistance, lose the support of the civilian population, and ultimately undermine their own strategic objectives.

These dual philosophical foundations, Kantian and consequentialist, reinforce each other in support of the same practical conclusion: compliance with IHL is both morally required and strategically beneficial. For officers of the Bangladesh Air Force, this dual justification should provide a robust foundation for the professional commitment to legal compliance, removing any temptation to treat the law as merely an external constraint on military effectiveness and replacing it with the understanding that the law and operational effectiveness are, properly understood, aligned.

93.3 The Dialectic Between Security and Liberty in Military Operations

Military operations conducted within the Bangladesh Air Force's operational environment, particularly in internal security contexts, involve a fundamental dialectical tension between the

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security objectives that the operations are designed to achieve and the liberty and rights of the individuals and populations affected by them. This tension is not unique to Bangladesh; it is a universal feature of the exercise of military force in contexts involving civilian populations.

The dialectic between security and liberty in military operations has been a central theme of political philosophy since at least the seventeenth century. Thomas Hobbes's argument in Leviathan that the sovereign's primary function is to provide security, and that individuals surrender significant liberty in exchange for that security, provides the foundational statement of one horn of the dilemma. John Locke's counter-argument that legitimate authority derives from the consent of the governed and is constrained by the protection of natural rights, including liberty and property, provides the counter-statement. The modern constitutional democratic state attempts to resolve this dialectic by subjecting the exercise of state security power, including military force, to constitutional and legal constraints that protect individual rights while allowing for the effective pursuit of legitimate security objectives.

For Bangladesh Air Force operations, this dialectic is most acute in internal security contexts where the targets of military operations are citizens of Bangladesh. The use of air power against the country's own population, even in pursuit of legitimate security objectives like counter-terrorism or counter-insurgency, involves the exercise of the most extreme form of state coercive power against people who retain constitutional rights as citizens. The legal framework for such operations must be designed to ensure that security objectives are pursued only through means that are proportionate, necessary, and respectful of fundamental rights, and that accountability for excesses is effective and credible.

The resolution of this dialectic requires not only legal framework but institutional culture. A military institution whose professional culture emphasises the protection of civilian rights as a core component of operational effectiveness, rather than treating rights protections as obstacles to operational efficiency, is better positioned to navigate the security-liberty tension in ways that serve both values. The development of such a culture in the Bangladesh Air Force, through professional education, training, leadership example, and accountability mechanisms, is one of the most important institutional investments that the service can make.

CHAPTER NINETY-FOUR: CONCLUSION TO PART SIX: THE LAW OF MILITARY OPERATIONS IN PERSPECTIVE

94.1 What Part Six Has Revealed

The analysis of the law of military operations conducted in Part Six has revealed a legal domain of extraordinary complexity, philosophical depth, and practical urgency. The law of armed conflict, applied to the specific characteristics of air operations, requires the mastery of an extensive body of treaty and customary rules, the development of sophisticated judgment for their application under operational pressure, and the institutional investment to ensure that legal compliance is systematically supported and effectively enforced. The law of peacekeeping operations, which governs the most significant operational contribution of the Bangladesh Air

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Force to the international community, requires an additional layer of legal expertise in the UN system, Status of Forces Agreement frameworks, and the specific conduct standards applicable in peacekeeping contexts. And the emerging legal domains of cyber operations, space operations, and autonomous weapons systems require the development of new legal frameworks that are not yet fully established either internationally or domestically.

Part Six has demonstrated that the law of military operations is not a static body of rules but a living, developing, contested, and philosophically rich domain of legal and moral engagement. The contemporary period is one of particular turbulence in this domain, as technological developments outpace legal frameworks, as compliance with established law is under increasing pressure in multiple conflict theatres, and as fundamental questions about the accountability of military conduct remain inadequately resolved. For officers of the Bangladesh Air Force, this means that engagement with the law of military operations cannot be limited to learning fixed rules and procedures; it requires the development of the intellectual resources to navigate legal uncertainty, to exercise judgment in the face of novel challenges, and to advocate for legal standards consistent with both Bangladesh's values and the international legal order.

94.2 The Operational Law Imperative

The analysis of Part Six supports a strong conclusion about the priority that the Bangladesh Air Force should give to the development of operational law capacity. This is not merely a recommendation about legal compliance, important as that is. It is a recommendation about institutional effectiveness, professional credibility, and strategic position. An air force that invests seriously in operational law capacity, that integrates legal advisers systematically into operational planning, that provides robust IHL education to all officers, and that maintains effective accountability mechanisms for operational conduct, is an air force that is better prepared for the full range of operational challenges it will face.

The Bangladesh Air Force's remarkable record as a peacekeeping contributor reflects a national commitment to international peace that is grounded in the constitutional values of the Bangladeshi state and expressed through the professionalism and dedication of the thousands of Bangladeshi airmen and women who have served in the most demanding environments on earth. Maintaining and enhancing that record requires not only tactical and operational excellence but the legal excellence that ensures that operations are conducted within the framework of international law and that the standards and reputation of Bangladesh's peacekeeping contribution are protected and advanced.

94.3 Looking Ahead to Part Seven

Part Seven of this handbook will examine the constitutional dimensions of Bangladesh Air Force law, returning to the foundational constitutional framework from the perspective of the specific operational and institutional challenges that Parts Five and Six have identified. Part Seven will analyse the constitutional protections available to air force personnel, the constitutional limits on the exercise of military authority, the constitutional framework for civilian oversight of military operations, and the constitutional reform agenda for Bangladesh's military justice system. It will also address the constitutional dimensions of Bangladesh's engagement with international law,

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including the relationship between Bangladesh's treaty obligations in the field of IHL and human rights law and the domestic constitutional order that governs the application of those obligations. Part Seven will thus bring the handbook's analysis full circle, connecting the operational and institutional detail of the preceding parts to the foundational constitutional values that give the entire framework of Bangladesh Air Force law its ultimate legitimacy and its deepest meaning.

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means that specific provisions and state positions are evolving continuously, and officers should monitor these developments through the official publications of the ICRC, the UN Office for Disarmament Affairs, and the relevant expert networks.

End of Part Six

Editorial Note: Part Seven of this handbook will extend the analysis to the constitutional dimensions of Bangladesh Air Force law, examining the relationship between the constitutional framework and the specific institutional, operational, and disciplinary challenges that the preceding Parts have identified, and developing a comprehensive account of the constitutional reform agenda for Bangladesh's military justice system and operational legal framework.

This Part is dedicated to the helicopter pilots of BANAIR who have served in the Democratic Republic of Congo, providing medical evacuation, transport, and operational support in conditions of extraordinary danger, and to all Bangladesh Air Force personnel who have represented their nation and their service in UN peacekeeping operations around the world. Their professionalism, courage, and commitment to the values of international peace reflect the highest traditions of the Bangladesh Air Force and of the constitutional order that the service exists to defend.

This handbook is intended as an educational and scholarly resource. It does not constitute legal advice. Officers seeking guidance on specific legal questions arising in the course of their duties should consult the legally qualified advisers of the Bangladesh Air Force.

PART SEVEN

CONSTITUTIONAL DIMENSIONS OF BANGLADESH AIR FORCE LAW: FUNDAMENTAL RIGHTS, CIVILIAN OVERSIGHT, JUDICIAL REVIEW, AND THE REFORM IMPERATIVE

PREFATORY NOTE TO PART SEVEN

There is a moment in the intellectual development of every serious student of Bangladesh Air Force law when the accumulated weight of statutory provision, procedural rule, and disciplinary precedent gives way to a more fundamental question. That question is not what the law says but whether what the law says is consistent with the constitutional order upon which all legal authority in Bangladesh ultimately depends. Part Seven of this handbook is dedicated to that question. It is, in the judgement of this author, the most important part of the handbook, because the constitutional framework is not merely one layer of Bangladesh Air Force law among many. It is the foundation upon which every other layer rests, the source of the ultimate authority that makes air force law legitimate rather than merely coercive, and the standard against which every provision of the Air Force Act, every exercise of commanding officer discretion, every court

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martial proceeding, and every administrative decision affecting the career, liberty, or dignity of a service member must ultimately be measured.

The timing of this Part is especially significant. Bangladesh is, as this handbook goes to press, in the midst of the most ambitious constitutional reform process in its history, a process initiated by the mass uprising of July and August 2024 that brought down the government of Prime Minister Sheikh Hasina and installed an interim administration under Professor Muhammad Yunus. The Constitution Reform Commission, led by Professor Ali Riaz and submitted its recommendations to the interim government on 15 January 2025. The July National Charter, signed on 17 October 2025 by the National Consensus Commission and twenty-four political parties, contains over eighty proposals for reform, nearly half of them constitutional in character. A referendum on these reforms is scheduled for February 2026, to be held on the same day as the next general elections. The Bangladesh that emerges from this process will be constitutionally different from the Bangladesh that existed before July 2024, and the implications for Bangladesh Air Force law are profound and far-reaching.

This Part does not merely describe the existing constitutional framework and its relationship to air force law. It engages with the ongoing reform process, analyses the implications of the proposed constitutional changes for military justice and military authority, examines the philosophical and jurisprudential foundations of the relationship between constitutional order and military law, and develops a normative argument about the direction that reform should take. Officers and scholars reading this Part are asked to bring to it not only their professional knowledge of air force law but their commitment to the constitutional values of the Bangladeshi state: human dignity, democracy, the rule of law, and the protection of fundamental rights. Those values are not external constraints imposed on the air force from outside. They are the values that the air force exists to defend, and they must be reflected in the law that governs the air force itself.

CHAPTER SEVENTY-FIVE: THE CONSTITUTIONAL ARCHITECTURE OF MILITARY AUTHORITY IN BANGLADESH

75.1 The Supremacy of the Constitution and Its Implications for Air Force Law

The Constitution of the People's Republic of Bangladesh, enacted in 1972, declares itself to be the supreme law of the Republic. Article 7(2) of the Constitution, in the version as originally adopted and as subsequently modified, provides that this Constitution is the solemn expression of the will of the people and is the supreme law of Bangladesh, and that if any other law is inconsistent with this Constitution that other law shall, to the extent of the inconsistency, be void. This provision of constitutional supremacy is not merely a formal declaration. It is the legal foundation of the entire constitutional order of Bangladesh, and it carries direct and immediate implications for every provision of the Air Force Act of 1953, every regulation made under that Act, and every exercise of power under it.

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The principle of constitutional supremacy means, in the first place, that the Air Force Act and all subordinate legislation made under it must be consistent with the Constitution in order to be valid law. Any provision of the Air Force Act that is inconsistent with a provision of the Constitution is void to the extent of that inconsistency. This is not a theoretical proposition. It has practical consequences that courts, military tribunals, and legal advisers must take seriously. If a provision of the Air Force Act purports to deny an accused service member the right to legal representation in circumstances where the Constitution guarantees that right, the constitutional provision prevails. If a regulation made under the Air Force Act purports to impose a punishment without any form of hearing in circumstances that the Constitution requires a hearing, the regulation is unconstitutional. If a commanding officer exercises a power under the Air Force Act in a manner that violates the fundamental rights of the person against whom the power is directed, the constitutional rights of that person provide a basis for challenge before the High Court Division of the Supreme Court of Bangladesh.

The principle of constitutional supremacy means, in the second place, that the Air Force Act and all exercises of power under it must be interpreted in a manner consistent with the Constitution to the extent that such a consistent interpretation is possible. Courts applying military law, including the courts martial constituted under the Air Force Act, are bound to interpret the Act's provisions in conformity with constitutional values. When a statutory provision is ambiguous, the interpretation that is consistent with constitutional rights should be preferred over the interpretation that is inconsistent with them. This principle of constitutional harmonisation is a fundamental principle of statutory interpretation that applies to the Air Force Act no less than to any other legislation.

The principle of constitutional supremacy means, in the third place, that the courts of Bangladesh, including the Supreme Court, have jurisdiction to review the consistency of the Air Force Act and exercises of power under it with the Constitution. The High Court Division of the Supreme Court has, under Article 44 read with Article 102 of the Constitution, jurisdiction to enforce fundamental rights. An officer or airman of the Bangladesh Air Force who believes that his or her fundamental rights have been violated by an action taken under the Air Force Act may petition the High Court Division for relief. This right of access to the constitutional courts is one of the most important safeguards available to service members, and its existence, scope, and limitations are questions of the greatest practical importance for the administration of military justice.

The proposition that the Constitution is supreme over the Air Force Act would appear to be self-evident, and in one sense it is. No serious scholar or legal practitioner would dispute it in the abstract. But in the specific application of this proposition to military law, there has been a persistent tendency, both in Bangladesh and in other jurisdictions, to treat military law as a domain of special rules that operate with a degree of insulation from ordinary constitutional scrutiny. The justifications offered for this insulation are familiar: the operational requirements of military service, the special relationship between the military and the state, the need for discipline and immediate obedience, the existence of a separate military justice system with its own appellate structure. These justifications are not without force, but they cannot justify the wholesale exclusion of constitutional rights from the military context. The Supreme Court of Bangladesh, in its exercise of constitutional jurisdiction, has affirmed the basic applicability of

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fundamental rights to military personnel, and the trend in comparative constitutional jurisprudence is clearly toward the more robust application of constitutional guarantees in the military context, not their further erosion.

75.2 The Constitutional Basis for the Bangladesh Air Force

The constitutional basis of the Bangladesh Air Force is found in several provisions of the Constitution. Article 61 of the Constitution provides that the Supreme Command of the Defence Services of Bangladesh shall be vested in the President, and it is to be exercised in accordance with law. This provision establishes two critical points. First, it locates the supreme command of the defence services, including the air force, in the constitutional office of the President, thereby connecting military authority to the constitutional order rather than leaving it as an autonomous power floating outside the constitutional framework. Second, it requires that the Supreme Command be exercised in accordance with law, meaning that even the President's exercise of authority over the armed forces must be lawful, must conform to the constitution, and is not an unlimited and unreviewable prerogative.

Article 62 of the Constitution provides for the establishment and maintenance of armed forces and requires that the raising and maintaining of those armed forces be regulated by law. The Air Force Act of 1953 is that law insofar as the air force is concerned. This constitutional requirement of statutory authorisation for the armed forces reflects a fundamental principle of constitutionalism: that institutions of such enormous power as the armed forces must derive their authority from, and must operate within, a framework established by law. The Parliament of Bangladesh, in enacting the Air Force Act, was exercising the constitutional function of establishing the legal framework for the air force. The air force's authority, its powers of discipline, its capacity to restrict the freedoms of its members, and its capacity to deploy lethal force all derive ultimately from this constitutional framework and not from any inherent or autonomous military authority that exists independently of it.

The constitutional provisions on the armed forces also include Article 63, which requires Parliamentary sanction before the Republic can be at war. This provision reflects the fundamental democratic principle that the decision to commit the Republic to war is a political decision of the gravest kind, one that must be made by the democratically elected representatives of the people rather than by the executive or the military acting alone. The practical operation of Article 63 in Bangladesh has been complicated by the country's history of military governance and by the fact that Bangladesh's military operations, including its extensive peacekeeping contributions, have often been conducted under circumstances that do not fit neatly into the binary of war and peace. These complications are addressed in detail in Part Six of this handbook in the context of operational law. But the constitutional principle underlying Article 63 is clear: the decision to wage war is the most fundamental political decision that a democracy can make, and it requires the explicit sanction of the people's representatives.

75.3 The President as Supreme Commander: Constitutional Theory and Political Reality

Article 61's vesting of the Supreme Command of the Defence Services in the President creates a constitutional structure that invites both theoretical analysis and historical reflection. In the

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constitutional design of 1972, the President was conceived as a largely ceremonial head of state operating within a parliamentary system in which effective executive power was vested in the Prime Minister and the Cabinet. In this design, the President's role as Supreme Commander was symbolic rather than operational: it connected the armed forces to the constitutional order and to the national sovereignty of Bangladesh, while leaving the practical direction of defence policy to the elected government.

This neat constitutional design was, however, disrupted repeatedly in Bangladesh's history by the exercise of military power beyond the boundaries contemplated by the constitutional framework. The coups of 1975, the period of direct military rule under General Ziaur Rahman and General Hussain Muhammad Ershad, and the military-backed government of 2007-2008 all reflected a reality in which the military's power within the political system exceeded what the constitutional text assigned to it. During these periods, the President's role as Supreme Commander was not merely symbolic. The President, often a serving or former military officer, wielded real political and military authority through the constitutional office of the presidency, blurring the line between constitutional authority and raw military power.

The constitutional reform process initiated after the July-August 2024 uprising has brought renewed attention to the mechanisms by which executive power, including power over the armed forces, can be checked and made accountable. The Constitution Reform Commission's January 2025 recommendations include proposals for strengthening the mechanisms of civilian oversight of the military, for limiting the concentration of power in the executive, and for ensuring that the President's role as Supreme Commander is genuinely accountable to the constitutional order rather than a potential vehicle for the personalisation of military power. These proposals are discussed in detail in later sections of this Chapter.

From the perspective of air force law, the constitutional structure of military command has immediate practical significance. The Air Force Act's system of command authority, in which commanding officers exercise powers of discipline, administration, and operational direction, ultimately derives from and is connected to the constitutional authority of the President as Supreme Commander. This means that the lawfulness of any exercise of command authority under the Air Force Act depends not only on compliance with the specific provisions of the Act but on the broader constitutional framework within which the Act operates. A commanding officer who exercises power in a manner that is inconsistent with the constitutional rights of service members cannot shelter behind the Air Force Act if the Act's authorisation does not extend to the unconstitutional exercise of that power.

75.4 The Relationship Between the Constitution's Fundamental Rights and Military Service

The Constitution of Bangladesh, in Part III, guarantees a series of fundamental rights to citizens. These rights include equality before the law and the equal protection of the law under Article 27; freedom from discrimination on grounds of religion, race, caste, sex, or place of birth under Article 28; equality of opportunity in public employment under Article 29; the right to life and personal liberty under Article 32; safeguards as to arrest and detention under Article 33; protection in respect of trial and punishment under Article 35; freedom of movement under

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Article 36; freedom of assembly under Article 37; freedom of association under Article 38; freedom of thought and conscience and of speech under Article 39; freedom of profession or occupation under Article 40; freedom of religion under Article 41; rights of property under Article 42; and protection of home and correspondence under Article 43.

The question of how these rights apply to personnel of the Bangladesh Air Force is one of the most important questions in Bangladesh military jurisprudence, and it is a question that has not been satisfactorily resolved in either the legislative framework or the judicial decisions of Bangladesh. The Air Force Act of 1953, as a pre-constitutional instrument that was not designed with the subsequent Constitution's rights framework in mind, does not systematically address the relationship between its provisions and the constitutional fundamental rights. This creates a body of unresolved tension between the specific statutory provisions of the Act and the constitutional guarantees that are supposed to be supreme.

The dominant view in most legal systems with which Bangladesh shares comparable legal traditions is that military service does not result in the wholesale suspension of constitutional rights, but that the exercise of constitutional rights may be modified in application to military personnel in ways that reflect the legitimate requirements of military discipline, operational security, and the special character of military service. This view is captured in the formulation, common in comparative constitutional jurisprudence, that service members are rights-bearing citizens in uniform. They do not surrender their constitutional rights by joining the air force. They agree to a framework in which certain rights may be restricted in certain ways that are necessary for military effectiveness, but those restrictions must themselves be consistent with the constitution, must be proportionate to the legitimate aim pursued, and must not go beyond what is necessary for that aim.

The philosophical difficulty with this formulation is that it requires a standard, a standard of proportionality or necessity, by reference to which the permissible scope of restrictions on military personnel's rights can be assessed. The content of that standard, and the institution that is authorised to apply it, are contested questions. The military tends to claim a wide margin of restriction justified by operational requirements that it alone fully understands. Courts and civil society tend to insist on more rigorous scrutiny of restrictions on fundamental rights, and on the inadequacy of deference to military authority as a substitute for genuine constitutional analysis. The resolution of this tension is one of the central constitutional law problems of military jurisprudence worldwide, and Bangladesh has not yet developed the body of constitutional case law that would provide clear guidance on where the appropriate line lies.

CHAPTER SEVENTY-SIX: FUNDAMENTAL RIGHTS AND THE SERVICE MEMBER: ANALYSIS BY RIGHT

76.1 The Right to Life and Personal Liberty: Article 32 and Military Detention

Article 32 of the Constitution of Bangladesh provides that no person shall be deprived of life or personal liberty save in accordance with law. This is one of the most fundamental rights in the

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constitutional order, and its application to military service personnel raises issues of both theoretical importance and immediate practical consequence.

The right to life, in its application to military personnel, raises immediate questions about the lawfulness of conditions and orders that expose personnel to lethal risk. In constitutional theory, the deployment of service members in circumstances where they may be killed is not a violation of Article 32, because the constitutional limitation permits deprivations of life that are in accordance with law, and the deployment of military forces is authorised by the lawful exercise of constitutional authority. But this theoretical formulation conceals important questions. What if the deployment decision was made unlawfully? What if an order that results in the death of a service member was issued in breach of legal requirements, in circumstances where compliance with the legal requirements might have prevented the death? What if the state's failure to provide adequate equipment, training, or intelligence support contributed to the death of a service member in circumstances where that failure amounted to a violation of the legal obligations of the relevant authorities?

These questions are not merely abstract. They arise in practice in the context of training accidents, operational mishaps, and failures of equipment maintenance that result in the deaths of air force personnel. The Bangladesh Air Force, like all air forces, operates complex and dangerous aircraft and equipment in conditions that carry inherent risks. When a pilot is killed in an accident that was caused, at least in part, by inadequate maintenance, by a failure of institutional safety procedures, or by negligent decisions by superior officers, the question of whether the state's obligation to protect the life of that service member has been violated is a constitutional question of the first order.

The right to personal liberty, as guaranteed by Article 32 and more specifically addressed in Articles 33 and 35, is directly engaged by the system of arrest, detention, and punishment provided for under the Air Force Act. Article 33 provides certain safeguards as to arrest and detention: a person arrested must be informed of the grounds of arrest as soon as possible, must be afforded the opportunity to consult a lawyer of his or her choice, and must be produced before a magistrate within twenty-four hours of arrest if the arrest is made by police or other civil authority. Article 35 provides that no person shall be convicted of any offence except for violation of a law in force at the time of the commission of the act; that no person shall be prosecuted or punished for the same offence more than once; that a person accused of any offence shall have the right to a speedy and public trial by an independent and impartial court or tribunal; that no person accused of any offence shall be compelled to be a witness against himself; and that no person shall be subjected to torture or cruel, inhuman, or degrading punishment or treatment.

Each of these guarantees has direct implications for the way in which the Air Force Act's disciplinary and judicial mechanisms operate. The guarantee of no double jeopardy under Article 35(2) raises questions about the relationship between military disciplinary proceedings and civilian criminal prosecutions for the same conduct. The guarantee against self-incrimination under Article 35(4) raises questions about the military's investigative practices, including the questioning of accused persons by their superiors in circumstances where the accused may feel unable to exercise the right to silence. The prohibition on torture and cruel treatment under

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Article 35(5) raises questions about the treatment of persons held in military detention facilities and about the use of physical punishment in the military context.

The most significant point of tension between Article 35 and the Air Force Act is the guarantee of a fair trial by an independent and impartial court or tribunal. Courts martial under the Air Force Act are constituted by senior officers of the air force, they are convened by a Convening Authority who is a senior officer of the air force, and they operate within the chain of command of the air force. The question of whether such a court can genuinely be described as independent and impartial within the meaning of Article 35 is a question that has been contested in Bangladesh and in every comparable jurisdiction. It is addressed at length in Chapter Seventy-Eight of this handbook.

76.2 Freedom of Expression and the Military Person's Right to Speak

Article 39 of the Constitution guarantees freedom of thought and conscience and of speech and expression to every citizen of Bangladesh, subject to reasonable restrictions imposed by law in the interests of security of the state, friendly relations with foreign states, public order, decency or morality, or in relation to contempt of court, defamation, or incitement to an offence. This constitutional guarantee is directly relevant to the situation of air force personnel, who are subject to extensive restrictions on their freedom of expression both under the Air Force Act and under the broader norms of military service.

Military service necessarily involves significant restrictions on freedom of expression. Service members may not publicly criticise the policies of the government, the decisions of their commanders, or the operations of the service in ways that would undermine discipline, compromise operational security, or damage the reputation of the armed forces. These restrictions are not, in principle, unconstitutional. Article 39 itself permits restrictions imposed by law in the interests of security of the state and public order, and restrictions on the expression of serving military officers are widely recognised as falling within the scope of legitimate restrictions on freedom of expression in a democratic society.

But the constitutional legitimacy of restrictions on military expression requires that those restrictions be prescribed by law, that they be necessary for a legitimate aim, and that they be proportionate to that aim. The Air Force Act and the associated regulations and standing orders impose extensive restrictions on the freedom of expression of air force personnel. Some of these restrictions are explicitly prescribed by the Act and the regulations, and they serve identifiable and legitimate aims. Others operate through the informal mechanisms of military culture and institutional pressure, without clear legal authorisation and without proportionality to any specific legitimate aim. The distinction between legitimate and illegitimate restrictions on military expression is one that constitutional analysis must draw carefully.

A particularly sensitive dimension of this question arises in the context of Bangladesh's recent political history. During the periods of military government, serving officers were directly involved in political activity, in governance, and in public discourse in ways that went far beyond what any plausible account of legitimate restriction on military expression could justify. The incorporation of military officers into civilian political life, the use of military authority to

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suppress civilian political activity, and the participation of military officers in political parties and government created a situation in which the restrictions on military expression operated asymmetrically: critical expression by civilian opponents of military government was suppressed, while political expression by those aligned with the military establishment was not merely tolerated but actively promoted.

This asymmetry is a deep constitutional pathology, and it is one that the constitutional reform process of 2024-2025 has sought, with varying degrees of success, to address. The July National Charter of 2025 includes proposals for the political neutrality of the armed forces, for restrictions on the involvement of serving and retired military officers in political activity, and for mechanisms to enforce those restrictions. The constitutional entrenchment of military political neutrality is one of the most important constitutional reforms that could be made in the interest of both democratic governance and the institutional integrity of the armed forces themselves.

The right to freedom of expression also has important implications for the internal discourse of the air force. The capacity of junior officers and other ranks to raise concerns about safety, institutional misconduct, ethical violations, and legal breaches within the service is essential to institutional health. Systems of internal reporting, whistleblower protection, and professional consultation that enable personnel to communicate concerns upward through the chain of command without fear of retaliation are both constitutionally required, as expressions of the fundamental right to freedom of expression applied to the workplace of the military, and institutionally valuable as mechanisms for the maintenance of institutional integrity. The Air Force Act, as currently structured, does not provide robust protections for internal whistleblowers. This is a significant gap that constitutional values and practical institutional needs both call for addressing.

76.3 Freedom of Association and the Right to Organise

Article 38 of the Constitution guarantees to every citizen the right to form associations or unions, subject to restrictions imposed by law in the interests of public order or morality. The application of this right to military personnel is one of the most contested questions in military constitutional law, and it raises profound issues about the nature of military service, the rights of service members as workers, and the relationship between institutional discipline and individual freedom of association.

Military personnel in most countries, including Bangladesh, are not permitted to form trade unions or join civilian labour unions, and they are not permitted to engage in collective industrial action. The justification for these restrictions is the military necessity argument: an air force whose personnel have the right to strike is an air force that cannot guarantee operational readiness, and operational readiness is a matter of national survival, not merely of employer-employee relations. This argument is powerful, and the restrictions on military industrial action that flow from it are generally accepted as constitutionally permissible in jurisdictions that have subjected them to constitutional scrutiny.

But the prohibition on military unionism does not exhaust the question of freedom of association for military personnel. Professional associations, welfare associations, alumni associations, and

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informal networks of officers sharing common professional interests all represent forms of association that do not threaten operational readiness and that serve legitimate functions. The Air Force Act and the associated regulations do not comprehensively address the question of which forms of association are permitted and which are prohibited, leaving the matter to be resolved by institutional practice and informal norms. This lack of clarity is problematic from a constitutional perspective, because the restriction of a fundamental constitutional right requires clear legal authorisation rather than informal institutional prohibition.

The right of freedom of association is also relevant to the participation of air force personnel in civil society organisations, religious organisations, and political parties. The Air Force Act and military custom prohibit service members from active involvement in partisan political activity, and this prohibition is constitutionally justifiable for reasons connected to the principle of military political neutrality. But the broad interpretation of this prohibition to encompass participation in non-political civil society activities, religious associations, and professional bodies goes beyond what the constitutional justification for restricting association rights can support. Constitutional proportionality analysis requires that restrictions on fundamental rights be no broader than necessary for the legitimate aim they serve.

76.4 Equal Protection and Non-Discrimination in Military Service

Article 27 of the Constitution guarantees equality before the law and the equal protection of the law to every citizen of Bangladesh. Article 28 prohibits discrimination against citizens on grounds of religion, race, caste, sex, or place of birth. Article 29 guarantees equality of opportunity to all citizens in respect of appointment to or employment or office in the service of the Republic. These provisions are directly and importantly relevant to the conduct of military service, where issues of discrimination in appointment, promotion, posting, and discipline have been significant practical problems.

Bangladesh's military history includes a profound episode of discrimination that bears directly on the constitutional principle of equal treatment: the systematic discrimination against Bengali officers and personnel in the Pakistan military during the period before 1971. That experience of ethnic discrimination, which was one of the contributing factors to the liberation movement, gave the founders of the Bangladesh armed forces a particular sensitivity to the importance of equal treatment within the military. The Bangladesh Air Force was founded with an explicit commitment to treating all personnel on the basis of merit, professional competence, and service, without discrimination on grounds of regional origin, religious affiliation, or ethnic identity.

The constitutional guarantee of non-discrimination applies to all aspects of military service: recruitment, appointment, training, promotion, assignment, discipline, and separation from service. The application of discriminatory criteria in any of these processes, whether explicit in formal policy or embedded in informal institutional practice, violates the constitutional guarantee and is void to the extent of the inconsistency. This means that an officer who believes that a promotion decision was made on discriminatory grounds has a constitutional basis, as well as a potential statutory basis under the Air Force Act, for challenging that decision.

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The gender dimension of equal treatment in military service has become an increasingly important constitutional issue in Bangladesh and in comparable jurisdictions worldwide. The Bangladesh Air Force has, in recent years, made significant progress in integrating women officers into the officer corps, including in roles that were previously restricted to male officers. The constitutional guarantee of equality of opportunity under Article 29 requires that this integration be genuine and that the treatment of women officers within the service reflect the constitutional standard of equal treatment, not merely the formal removal of discriminatory barriers. The persistence of informal discriminatory attitudes and practices within any male-dominated institution is a constitutional problem, not merely a management challenge, and the constitutional guarantee of non-discrimination requires active institutional effort to address it.

76.5 Protection from Arbitrary Arrest and Detention: Constitutional Safeguards in the Military Context

One of the most immediately important constitutional issues in air force law is the application of the constitutional safeguards against arbitrary arrest and detention to the arrest and detention of service members under the Air Force Act. Articles 32, 33, and 35 together establish a framework of constitutional protection for persons subject to arrest and detention by the state, and the question is how that framework applies to the military-specific mechanisms of arrest and detention provided for in the Air Force Act.

The Air Force Act provides extensive powers of arrest and detention for service members. Section 86 of the Act empowers any officer to arrest and detain a person subject to the Act who commits, is accused of committing, or reasonably suspected to have committed an offence under the Act. Section 87 provides for the handing over of persons arrested under the Act to the custody of the person's commanding officer. Section 88 provides that a person under arrest shall not be detained for more than eight days without a trial being commenced or without the matter being referred to a higher authority, unless circumstances prevent such action. The Act also contemplates the detention of persons awaiting trial by court martial and the detention of persons serving sentences imposed by courts martial.

The constitutional question is whether these military-specific detention provisions are consistent with the safeguards of Articles 32, 33, and 35. Several aspects of this question deserve careful analysis. The first is whether the constitutional requirement of production before a magistrate within twenty-four hours, as contemplated by Article 33(2), applies to military arrests. The general position in comparable jurisdictions is that military arrest and pre-trial detention is governed by the military-specific statutory framework rather than the civilian twenty-four-hour rule, but that military detention must comply with constitutional standards of due process and must not be arbitrary or prolonged beyond what is necessary for the legitimate purposes of the military justice system. The eight-day maximum detention period under Section 88 of the Air Force Act must be understood in light of these constitutional requirements.

The constitutional prohibition on torture and cruel, inhuman, or degrading treatment under Article 35(5) is directly and urgently relevant to the conditions of military detention. Bangladesh's military detention facilities, like those of many countries, have been the subject of allegations of mistreatment. The constitutional prohibition is absolute: there is no exception that

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permits torture or cruel treatment in the military context. Every allegation of mistreatment of persons detained under the Air Force Act is a potential constitutional violation, and the obligation of constitutional compliance requires that commanding officers maintain effective oversight of detention conditions, that independent inspection mechanisms are in place, and that allegations of mistreatment are genuinely investigated and prosecuted.

CHAPTER SEVENTY-SEVEN: JUDICIAL REVIEW OF MILITARY DECISIONS: CONSTITUTIONAL JURISDICTION AND ITS LIMITS

77.1 The High Court Division's Jurisdiction: Article 102 and Its Application to Military Cases

Article 102 of the Constitution of Bangladesh confers on the High Court Division of the Supreme Court a broad jurisdiction to review the exercise of executive power. Under Article 102(1), any person aggrieved by the action of any person performing a function in connection with the affairs of the Republic may apply to the High Court Division for an order declaring that the action has been done without lawful authority or is not given effect to. Under Article 102(2), the High Court Division may, on application, give directions or orders to any person performing functions in connection with the affairs of the Republic for the enforcement of any fundamental right conferred by Part III of the Constitution.

These constitutional provisions have direct implications for the relationship between the civil courts and the military justice system. They mean, in principle, that an officer or airman of the Bangladesh Air Force who has been the subject of a court martial, a disciplinary proceeding, or an administrative decision under the Air Force Act may petition the High Court Division for review of that action on constitutional grounds. The High Court Division's jurisdiction extends to any person performing functions in connection with the affairs of the Republic, and officers of the Bangladesh Air Force, in performing their official functions, are performing functions in connection with the affairs of the Republic within the meaning of Article 102.

The practical operation of the High Court Division's jurisdiction in relation to military matters has, however, been complicated by a persistent judicial tendency to treat military matters as a domain of special deference, in which the courts should be reluctant to intervene except in cases of the most obvious illegality or constitutional violation. This tendency reflects the general principle that courts should defer to the expertise of institutions in matters falling within their particular competence. The argument is that courts are not well-positioned to second-guess the professional military judgements of commanding officers, the operational assessments of air force commanders, or the disciplinary decisions of courts martial, because these judgements involve forms of specialised knowledge and professional experience that the judiciary does not possess.

This argument from institutional competence has genuine force, but it must be kept within its appropriate limits. Courts are indeed not well-positioned to second-guess professional military judgements about operational tactics, training standards, or command arrangements. But courts

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are well-positioned, and constitutionally required, to review the lawfulness of military decisions: to ask whether they were made within the scope of the authority conferred by law, whether they complied with the procedural requirements of the Air Force Act and the Constitution, and whether they respected the fundamental rights of the persons affected. These are legal questions, not military professional judgements, and the courts' competence to decide them is not diminished by the fact that they arise in a military context.

The development of a robust judicial review jurisdiction in relation to military decisions is not, therefore, an intrusion by the judiciary into the domain of military professional judgment. It is the exercise of the judiciary's constitutional function of ensuring that the exercise of power by all organs of the state, including the armed forces, is consistent with the Constitution and with the law. An air force that is subject to genuine and effective constitutional judicial review is an air force whose exercise of power is legitimated by the rule of law. An air force that is insulated from judicial review operates on the basis of institutional authority alone, which is not a sufficient foundation for the exercise of power in a constitutional democracy.

77.2 The Writ Jurisdiction and Military Personnel: Leading Cases and Principles

The relationship between the High Court Division's writ jurisdiction and military matters has been addressed in a number of significant judicial decisions in Bangladesh, though the body of constitutional military law jurisprudence in Bangladesh is less extensive than in comparable jurisdictions such as India, the United Kingdom, or Canada. The decisions that do exist, however, establish certain important principles that provide a foundation for the developing constitutional law of military service in Bangladesh.

The general principle that has emerged from Bangladesh's constitutional courts is that persons subject to the Air Force Act are not entirely excluded from the constitutional remedies available under Article 102. The courts have affirmed that the constitutional guarantee of fundamental rights applies to military personnel, and that the High Court Division has jurisdiction to grant relief where those rights have been violated by action taken under the Air Force Act. At the same time, the courts have recognised that the military context may affect the scope of judicial review, that certain decisions falling within the exclusive competence of military authorities may not be suitable for judicial second-guessing, and that the courts should be sensitive to the operational and disciplinary exigencies of military service.

The specific categories of military decision in which judicial review has been sought most frequently include decisions relating to promotions and postings (which affect the career interests of officers and raise issues of equal treatment and procedural fairness), decisions relating to the termination of service (which affect the livelihood and reputation of officers and raise issues of natural justice), decisions relating to courts martial (which affect the liberty and good name of accused persons and raise issues of due process and fair trial), and decisions relating to the conditions of military detention (which raise issues of human dignity and prohibition of cruel treatment). Each of these categories raises distinct constitutional issues, and the developing case law of Bangladesh's constitutional courts, supplemented by the comparative jurisprudence of other common law military jurisdictions, provides important guidance on the principles applicable in each category.

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In cases involving promotions and postings, the courts have generally adopted a relatively deferential approach, recognising that the assessment of professional merit and the determination of operational requirements are matters within the professional competence of military authorities that are not easily amenable to judicial review. But the courts have also affirmed that even promotional decisions must comply with the constitutional principle of equal treatment and must not be based on discriminatory or otherwise impermissible criteria. Where there is evidence that a promotional decision was influenced by discriminatory considerations, by personal animosity, or by criteria unrelated to professional merit, the courts have been willing to intervene.

In cases involving the termination of service, the constitutional protection of livelihood and the principle of natural justice have led the courts to require that officers whose service is being terminated should be given notice of the grounds for termination, an opportunity to be heard, and a reasoned decision. The principle of audi alteram partem (hear the other side) is a foundational principle of natural justice that applies to all exercises of power that adversely affect the interests of individuals, and it applies with full force in the military context. An officer dismissed from service without being given an opportunity to respond to the allegations against him has been denied natural justice, and this denial provides a basis for constitutional challenge.

In cases involving courts martial, the constitutional issues are the most complex and the most directly engaged with the fundamental rights guarantees of Part III. These issues are addressed in detail in Chapter Seventy-Eight of this handbook.

77.3 The Doctrine of Exclusive Military Jurisdiction: Justifications, Limits, and Critiques

The doctrine of exclusive military jurisdiction holds that certain matters arising within the military context are exclusively within the jurisdiction of military authorities and are not subject to review by civil courts. This doctrine has its origins in the common law tradition, in which courts historically declined to supervise the internal affairs of the armed forces, treating military service as a special relationship between the sovereign and the servant that was governed by its own norms and not by the ordinary law of the land. The doctrine received its most famous common law expression in the nineteenth-century cases that held that military officers had no remedy in civil courts for wrongs done to them in the course of their military service, on the theory that the relationship between the state and the soldier was governed by public law considerations that the ordinary courts were not competent to adjudicate.

This doctrine of exclusive military jurisdiction has been substantially eroded in modern constitutional law, as the principle of constitutional supremacy and the commitment to the rule of law have been extended to the military context. In jurisdictions with strong constitutional rights traditions, including Canada, the United Kingdom, and Germany, the military is no longer treated as an autonomous domain insulated from constitutional scrutiny. Courts in these jurisdictions have affirmed that constitutional rights apply to military personnel, that decisions affecting the rights of service members are subject to judicial review, and that the only legitimate basis for differential treatment of military personnel in the application of constitutional rights is the existence of genuine and specific military justifications that are proportionate to the restriction of rights involved.

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In Bangladesh, the erosion of the doctrine of exclusive military jurisdiction has been more gradual and less systematically articulated in judicial decisions. The constitutional text is clear on the supremacy of the Constitution and on the applicability of fundamental rights to all persons within Bangladesh, including service members. But the practical application of this constitutional text to specific military decisions has been uneven, reflecting both the institutional conservatism of courts in dealing with military matters and the genuine difficulties of applying civilian constitutional standards to the special circumstances of military service.

The critique of exclusive military jurisdiction from the perspective of constitutional theory is powerful and, in this author's view, decisive. A constitutional democracy committed to the rule of law cannot maintain a domain of power that is entirely exempt from constitutional scrutiny. The armed forces, as the most powerful institutions of the state, are precisely the institutions that stand most in need of constitutional accountability. The exercise of power over persons, including the power to detain, to punish, to discipline, to dismiss from service, and to deploy in conditions of lethal risk, requires the most stringent justification in terms of constitutional authority and constitutional compliance. The claim that these exercises of power are exempt from judicial review on the ground of institutional sovereignty or military necessity is a claim that no serious constitutional theory can sustain.

At the same time, the practical complexity of subjecting all military decisions to full judicial review must be acknowledged. The operational requirements of military service, the need for rapid decision-making, the technical nature of many military professional judgements, and the constitutional reality that the courts are not equipped to make operational military decisions themselves all argue for a calibrated approach to judicial review in which the intensity of scrutiny varies with the nature of the decision and the constitutional interests at stake. Decisions affecting fundamental rights require rigorous scrutiny. Decisions falling within the core of operational military judgment are entitled to substantial deference. Between these poles lies a wide range of decisions that require contextually sensitive analysis by courts that are willing to engage seriously with both the constitutional rights of service members and the legitimate institutional interests of the air force.

77.4 International Comparative Perspectives: The Supreme Court of Canada's 2024 Decision

The Supreme Court of Canada's decision in R v Edwards, handed down in April 2024, represents one of the most important comparative constitutional jurisprudential developments in military law in recent years and is directly relevant to the constitutional dimensions of Bangladesh Air Force law. The case concerned the question of whether military judges, who are commissioned officers of the Canadian Armed Forces, can be genuinely independent within the meaning of the Canadian Charter of Rights and Freedoms' guarantee of trial by an independent and impartial tribunal.

The Supreme Court of Canada's decision in Edwards affirmed that military judges are entitled to judicial independence and that the accused in a court martial is entitled to trial by a genuinely independent and impartial tribunal as a matter of constitutional right. The Court held that the status of military judges as commissioned officers does not inherently undermine their

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independence, but that the institutional arrangements governing military judges, including their tenure, remuneration, and conditions of service, must be structured in a way that provides effective protection against interference with their independence by the executive branch of government and by the military chain of command.

The significance of the Edwards decision for Bangladesh Air Force law is twofold. First, it confirms the global trend in constitutional military jurisprudence toward the more robust application of constitutional standards of independence and impartiality to military tribunals. This trend is directly relevant to Bangladesh, where the constitutional guarantee of a fair trial by an independent and impartial tribunal under Article 35 must be understood in light of the international comparative context. Second, the Edwards decision's specific analysis of the institutional conditions necessary for genuine judicial independence in the military context provides a framework that can be adapted to the Bangladesh context, identifying the specific institutional changes that would be needed to bring the Bangladesh court martial system into compliance with Article 35's requirements.

The institutional conditions for genuine judicial independence in the military court martial system, as identified in the comparative jurisprudence, include: security of tenure for military judges, so that they cannot be removed from their judicial functions except for cause through a process that itself meets standards of independence; financial security, so that the remuneration of military judges is not subject to interference by military commanders; and institutional independence, meaning that military judges must be administratively separated from the chain of command to a sufficient degree that their decisions cannot be influenced by the preferences of superior officers. Whether the court martial system of the Bangladesh Air Force meets these conditions is a question that deserves careful analysis by the constitutional reform process and by the institutions responsible for military justice.

CHAPTER SEVENTY-EIGHT: THE COURT MARTIAL SYSTEM AND CONSTITUTIONAL FAIR TRIAL REQUIREMENTS

78.1 The Constitutional Right to a Fair Trial: Article 35 and Its Requirements

Article 35 of the Constitution of Bangladesh contains several distinct but related guarantees that collectively constitute the constitutional right to a fair trial. These guarantees apply, in principle, to all trials of accused persons in Bangladesh, including trials by court martial under the Air Force Act. The extent to which the court martial system of the Bangladesh Air Force complies with the fair trial requirements of Article 35 is a question of fundamental constitutional importance, one that has significant implications not only for the rights of accused service members but for the legitimacy and effectiveness of the military justice system as a whole.

The fair trial requirements of Article 35 include: the prohibition on ex post facto punishment in Article 35(1), which requires that no person shall be convicted of any offence except for violation of a law in force at the time of the commission of the act; the prohibition on double jeopardy in Article 35(2), which requires that no person shall be prosecuted or punished for the

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same offence more than once; the right to a speedy and public trial by an independent and impartial court or tribunal in Article 35(3); the guarantee against self-incrimination in Article 35(4); and the absolute prohibition on torture and cruel, inhuman, or degrading punishment or treatment in Article 35(5).

Each of these requirements raises specific questions in the context of the Bangladesh Air Force's court martial system. The prohibition on ex post facto punishment raises questions about the application of the Air Force Act's provision incorporating the usages of the service as law, discussed in Chapter One of this handbook: if a service member is charged with violating a usage of the service that was not written down and was not clearly communicated to the accused, the ex post facto principle may be implicated. The prohibition on double jeopardy raises questions about the relationship between administrative action, such as discharge from service or demotion, and subsequent criminal prosecution before a court martial for the same conduct. The right to a speedy trial raises questions about the delays that can occur in the constitution and conduct of courts martial under the Air Force Act. The right to a public trial raises questions about the closed-session provisions of the Air Force Act and the circumstances in which the public can be excluded from court martial proceedings.

78.2 Independence and Impartiality of Courts Martial: The Central Constitutional Question

The requirement of an independent and impartial court or tribunal, as guaranteed by Article 35(3), is the most fundamental and the most contested constitutional requirement in the context of the court martial system. The structure of the court martial system under the Air Force Act, in which members of the court are serving officers of the air force who are appointed by the Convening Authority, who is also a senior serving officer, raises profound questions about whether courts martial can genuinely provide the independent and impartial adjudication that the Constitution requires.

The concern about independence arises at multiple levels. At the institutional level, courts martial are constituted within the chain of command of the air force, and their members are serving officers whose career prospects depend on the assessments of the very commanders who convene the courts. This creates an obvious structural risk of influence, whether explicit or implicit, on the decisions of court martial members. Even if no explicit pressure is applied, members of courts martial may be unconsciously influenced by awareness of the institutional expectations of their superiors, by their understanding of the outcomes that the command structure desires, and by their own career interests.

At the personal level, the members of a court martial are fellow officers who share the professional culture, institutional loyalties, and esprit de corps of the air force. The accused person appearing before a court martial is a member of the same institution, perhaps known personally to some of the members of the court. The social and professional relationships within the air force can create both implicit biases in favour of the institution's interest in conviction, where the offence is seen as an affront to the service, and biases in favour of the accused, where solidarity with a fellow officer militates against conviction. Neither of these biases is consistent with the constitutional requirement of impartiality.

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At the procedural level, the Air Force Act's provisions for the constitution of courts martial do not provide the robust structural guarantees of judicial independence that comparable civilian proceedings enjoy. Military judges appointed under the Act do not have security of tenure comparable to that of civilian judges. The procedures for challenging the impartiality of court martial members are less developed than the analogous procedures in civilian criminal proceedings. The separation between the prosecuting and adjudicating functions is less clear in the military justice system than in the civilian system.

These structural concerns are not merely theoretical. They reflect the real risk, documented in multiple empirical studies of military justice systems in multiple countries, that court martial proceedings are influenced by institutional culture and command preferences in ways that compromise their fairness. The 2024 Military Justice Review Panel report in the United States, while addressed to a different legal system, made findings consistent with this concern, noting that recent reforms intended to increase trust and transparency had in some cases produced counterproductive results, suggesting that the problems of independence and impartiality in military justice are not easily resolved by incremental statutory reform and may require more fundamental structural change.

The solution to the independence and impartiality problem in military courts martial is the subject of ongoing debate in military jurisprudence worldwide. Three broad approaches are identifiable in comparative practice. The first approach is the military judge model, in which courts martial are presided over by a legally trained military judge with guaranteed tenure and institutional independence, supported by a panel of officer members for the determination of guilt and sentence. This model provides greater independence than the traditional commanding officer-dominated court martial, but the judge remains a serving officer within the military hierarchy, which limits the degree of independence that can be achieved. The second approach is the civilian judge model, in which civilian judges, drawn from the civil judiciary, preside over courts martial. This model, which has been adopted in several countries including the United Kingdom, provides a greater degree of genuine independence from the military chain of command, at the cost of some degree of familiarity with the specific professional context of military service. The third approach is the integrated model, in which military justice cases above a certain level of seriousness are transferred to the civil courts for trial, while the military justice system retains jurisdiction over less serious disciplinary matters. This approach provides the maximum degree of judicial independence for serious cases, while preserving a military-specific system for routine disciplinary matters.

The choice between these approaches involves complex trade-offs between the values of judicial independence, military professional expertise, operational convenience, and institutional legitimacy. What is constitutionally required is not a specific institutional model but the achievement of genuine independence and impartiality in the adjudication of the most serious charges that come before military courts. The specific institutional arrangements through which that standard is achieved may legitimately vary, but the constitutional standard itself is non-negotiable.

78.3 The Right to Legal Representation in Courts Martial

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The right of an accused person to legal representation, while not explicitly stated as a general right in Article 35 of the Bangladesh Constitution, is a fundamental element of the right to a fair trial as understood in constitutional jurisprudence worldwide. It is explicitly provided for in Article 35(3)'s requirement of a fair trial, and it is implicit in the more general constitutional guarantee of equality of arms that is a component of the fair trial right. An accused person who faces trained prosecutors, complex rules of procedure and evidence, and the potentially devastating consequences of conviction before a court martial, without access to competent legal representation, cannot realistically exercise the fair trial rights that the Constitution guarantees.

The Air Force Act provides for legal representation of accused persons before courts martial, but the practical effectiveness of this provision is dependent on the availability of legally qualified representation and on the conditions under which representation can be provided. The judge advocate system under the Air Force Act, which provides for the appointment of a legally qualified officer to advise the court martial on legal questions, is not a substitute for independent legal representation of the accused. The judge advocate serves the court, not the accused, and cannot provide the adversarial advocacy that effective representation of the accused requires.

In the constitutional reform context, the case for ensuring that all accused persons before courts martial have access to legally qualified and genuinely independent defence representation is compelling. The military justice system in Bangladesh does not currently provide a comprehensive system of legal aid for accused persons before courts martial, meaning that officers and airmen who cannot afford private legal representation may face court martial proceedings without effective legal assistance. This gap is a constitutional deficiency that should be addressed by legislative reform.

78.4 Pre-Trial Rights: Disclosure, Preparation, and the Presumption of Innocence

The constitutional right to a fair trial includes, as an essential component, the right of the accused to know the case against them and to have adequate time and facilities to prepare their defence. These rights, which are captured in the principle of equality of arms, are directly relevant to the pre-trial phase of court martial proceedings under the Air Force Act.

The principle of disclosure, which requires the prosecution to disclose to the accused all material evidence in its possession that is relevant to the case, including evidence that may assist the defence, is a fundamental requirement of a fair trial. The Air Force Act does not comprehensively address the prosecution's disclosure obligations in court martial proceedings, and the practical operation of disclosure in military justice contexts is not always consistent with the constitutional standard. The tendency of military institutions to treat investigation files as confidential documents to which the accused has limited access, justified on grounds of security and operational sensitivity, must be weighed against the constitutional requirement that the accused have access to the material necessary for the preparation of an effective defence.

The presumption of innocence, which requires that the accused be treated as innocent until proven guilty beyond reasonable doubt, is a cornerstone of the constitutional right to a fair trial. Its application in the court martial context raises specific concerns. The military's institutional culture, which is premised on discipline, hierarchy, and the authority of command, may create

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implicit presumptions that a service member charged with an offence is guilty, that the decision of the commanding officer or investigating authority to prefer charges reflects a sound professional assessment, and that the task of the court martial is to ratify rather than independently to assess the findings of the investigation. These implicit presumptions, where they operate, are incompatible with the constitutional requirement of the presumption of innocence, and countering them requires both structural changes to the military justice system and cultural changes within the institution.

78.5 The Appeal and Review Structure: Constitutional Requirements

The constitutional right to a fair trial, interpreted in the light of international human rights standards that are relevant to the interpretation of the Constitution's rights provisions, includes a right to have the conviction and sentence reviewed by a higher tribunal. The Air Force Act provides a structure of review and appeal for court martial findings and sentences, including the power of the Judge Advocate General to review proceedings and the jurisdiction of the civil courts to consider constitutional challenges to military proceedings.

The adequacy of the Air Force Act's appeal and review structure, measured against the constitutional standard of effective review, is open to question on several grounds. The internal review mechanisms of the military justice system, which involve review by superior military officers and by the Judge Advocate General, provide a degree of expert scrutiny of court martial proceedings but do not provide the independence from the chain of command that genuine judicial review requires. The constitutional courts' jurisdiction to review military proceedings on constitutional grounds provides an important external check, but its effectiveness is limited by the courts' historical tendency to defer to military authority in matters of military discipline.

The comparative experience of military justice reform in other jurisdictions suggests that the development of a genuinely independent military appellate structure, staffed by legally qualified judges with appropriate institutional independence, is essential for the constitutional legitimacy of the court martial system. The Military Justice Review Panel's December 2024 report in the United States made specific recommendations for strengthening the independence and competence of the military appellate system, reflecting a global consensus among military justice reformers that effective appellate review is not a luxury but a constitutional necessity.

CHAPTER SEVENTY-NINE: CIVILIAN OVERSIGHT OF THE MILITARY: CONSTITUTIONAL PRINCIPLES AND PRACTICAL MECHANISMS

79.1 The Democratic Principle of Civilian Control

The principle of civilian control of the military is one of the foundational principles of democratic constitutionalism, and it is directly embedded in the constitutional framework of Bangladesh, even if its practical implementation has been inconsistent with the constitutional ideal throughout significant periods of Bangladesh's history. The principle holds that in a democratic society, the armed forces are the instrument of the elected government, that they

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serve the constitutional order and not any particular military, political, or personal interest, and that the authority of the military is ultimately derived from and accountable to the civilian constitutional order.

The philosophical foundations of the civilian control principle are rooted in the social contract theory of political authority, most powerfully articulated by John Locke and extended by subsequent constitutional theorists. In Lockean theory, political authority is a trust conferred by the people on the government for the specific purposes of protecting the rights and liberties of the people. The armed forces, as the most powerful coercive instrument of the government, are subject to this trust in the most stringent sense. A military that acts outside the authority conferred by the people's trust, that pursues its own institutional interests rather than the constitutional purposes for which it was created, violates the fundamental premise of democratic governance. The consent of the governed is the only legitimate basis for the exercise of political power, and the armed forces, whose power is greatest, are most bound by this requirement of consent-based legitimacy.

The principle of civilian control received its most authoritative modern theoretical articulation in Samuel Huntington's classic work The Soldier and the State, published in 1957, which distinguished between subjective and objective civilian control. Subjective civilian control refers to the maximisation of civilian power over the military through direct political supervision, a model associated with the direct involvement of political parties, civilian administrators, and elected politicians in the internal affairs of the military. Objective civilian control refers to the maximisation of military professionalism, in which the military develops a distinct professional ethos that makes it politically neutral and responsive only to legitimate civilian authority exercised through proper constitutional channels, while the civilian authorities refrain from detailed interference in military professional matters. Huntington's model of objective civilian control has been enormously influential in military sociology and civil-military relations theory, and it provides the conceptual framework within which the Bangladesh Air Force's constitutional position should be understood.

The Huntingtonian framework, however, has been subjected to important critiques, many of which are directly relevant to the Bangladesh context. The most fundamental critique is that the model assumes a clean separation between the political and the military spheres that does not correspond to the reality of military institutions in most countries, and certainly not in Bangladesh. The military's role in domestic politics, the political consequences of military operational decisions, the political dimensions of defence procurement and resource allocation, and the inherently political character of decisions about the use of force all mean that the military cannot simply withdraw to a purely professional sphere insulated from political considerations. The civilian control principle, in practice, requires not the complete depoliticisation of the military but the maintenance of clear lines of democratic accountability for decisions that have political dimensions.

79.2 Bangladesh's History of Civil-Military Relations: The Constitutional Challenge

Bangladesh's history of civil-military relations is one in which the principle of civilian control has been repeatedly violated, and in which the constitutional order has been repeatedly subverted

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by the exercise of military power beyond the boundaries of constitutional authority. The coups of August and November 1975, the period of General Ziaur Rahman's military rule from 1975 to 1981, the subsequent period of General Hussain Muhammad Ershad's military governance from 1982 to 1990, and the military-backed government of General Moeen Ahmed in 2007-2008 all represented failures of the constitutional principle of civilian control that have left lasting marks on Bangladesh's institutional landscape.

These historical episodes have direct implications for the constitutional framework of Bangladesh Air Force law. Each period of military governance involved the use of military law and military authority for purposes beyond the constitutional scope of the Air Force Act and the Defence Services Acts. The Proclamation Orders issued during military rule, the promulgation of Martial Law Regulations, and the extension of military jurisdiction into the civilian sphere were all exercises of power that could not be reconciled with the constitutional order as originally established in 1972. The subsequent recognition of these acts by amending the Constitution, through the mechanisms of retrospective constitutional validation that have been used multiple times in Bangladesh's history, created what constitutional theorists describe as constitutional moments: points at which the fundamental terms of the constitutional order are renegotiated, whether legitimately or otherwise, outside the normal mechanisms of constitutional amendment.

The Constitution Reform Commission's January 2025 recommendations specifically address the mechanisms by which the constitutional framework enabled military authoritarianism. The Commission's proposals include the deletion of Articles 7A and 7B of the existing Constitution, which were introduced precisely to entrench constitutional changes made during periods of authoritarian governance and to bar their further amendment. The removal of these entrenching provisions is designed to eliminate one of the constitutional mechanisms through which military and authoritarian governments have sought to permanently alter the constitutional order, and to restore the Constitution to its democratic foundations.

For the Bangladesh Air Force, the constitutional reform process of 2024-2025 represents both an opportunity and a challenge. The opportunity is to embed the institutional culture and legal framework of the air force within a constitutional order that is more robustly democratic, more clearly protective of fundamental rights, and more firmly committed to the principle of civilian control than the constitutional order as it has operated in practice throughout much of Bangladesh's history. The challenge is to engage constructively with the reform process, to contribute the air force's professional perspective on the constitutional framework for military authority and military justice, and to embrace the institutional changes that are necessary to bring the air force into full compliance with the constitutional values of the reformed constitutional order.

79.3 Parliamentary Oversight of the Military: Mechanisms, Deficiencies, and Reforms

In a constitutional democracy, the primary mechanism of civilian oversight of the military is parliamentary: the elected legislature, representing the sovereign people, exercises oversight of the armed forces through its legislative, budgetary, and investigative functions. The Parliament of Bangladesh has constitutional functions in relation to the armed forces that are of great importance for civilian control: it enacts the statutes that constitute and govern the armed forces,

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including the Air Force Act; it appropriates the funds for defence expenditure; it may question ministers about defence matters; and it provides a forum for public debate about defence policy and military conduct.

The practical effectiveness of parliamentary oversight of the Bangladesh military has, however, been limited by a number of structural and political factors. The Parliament's defence committees have not historically exercised the robust and probing oversight of military affairs that comparable committees exercise in more mature parliamentary democracies. The classified character of much defence information, the technical complexity of military matters, and the tendency of governments to treat defence as a domain of executive prerogative rather than parliamentary scrutiny have all contributed to this limitation. The concentration of executive power in the Prime Minister's office, and the relationship between the Prime Minister and the military that has characterised Bangladesh's political system, have further circumscribed the Parliament's effective oversight role.

The constitutional reform agenda of 2024-2025 includes proposals for strengthening parliamentary oversight, including the establishment of a bicameral legislature with distinct oversight functions for each house, the strengthening of parliamentary committee powers, and the creation of independent oversight institutions accountable to the Parliament rather than to the executive. For military law, the most significant reform would be the establishment of a parliamentary committee with genuine investigative powers in relation to military justice, military conduct, and defence administration, staffed with the legal and technical expertise necessary to exercise meaningful oversight rather than merely formal scrutiny.

The Constitution Reform Commission's recommendations also include proposals for the independence of key state institutions from executive control, which have relevance for military oversight. An independent National Human Rights Commission with genuine powers of investigation and complaint reception in relation to the conduct of all state institutions, including the armed forces, would provide a valuable mechanism for civilian oversight of military conduct that operates outside the chain of command and outside the direct political control of the executive. The establishment of an independent military ombudsman or similar institution, with the power to investigate complaints from service members and from civilians about the conduct of military personnel, would similarly advance the constitutional values of accountability and rule of law in the military context.

79.4 The Role of Civil Society and the Media in Military Oversight

Beyond formal institutional mechanisms of parliamentary and executive oversight, civil society organisations and the independent media play an essential role in the accountability of military institutions. In democratic societies, investigative journalism, academic research, and the work of human rights organisations provide forms of external scrutiny that are indispensable to genuine accountability. The work of these civil actors requires an environment of genuine freedom of expression and freedom of information in which access to information about military matters is not systematically denied on grounds of national security classification, and in which journalists and researchers who investigate military misconduct are protected from retaliation.

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Bangladesh's recent history includes well-documented instances in which journalists, civil society activists, and academics who sought to investigate or criticise the conduct of security forces, including the military, faced legal harassment, arrest, and violence. The Digital Security Act of 2018, which was widely used to suppress critical expression about government and military conduct, represented a direct assault on the conditions of possibility for meaningful civil oversight of the military. The interim government's commitment to reforming or repealing this Act is a significant step in the right direction, and the Constitution Reform Commission's proposals for stronger constitutional protection of freedom of expression provide an important constitutional foundation for the civil society oversight role.

For air force law, the implications of this dimension of civilian oversight are direct. The Bangladesh Air Force, as a state institution subject to the constitutional principle of accountability, must operate in a manner that is open to appropriate civil scrutiny. This does not mean the unrestricted disclosure of classified operational information. It means that the general conduct of the institution, the principles and procedures of its justice system, the conditions of service of its personnel, and the standards to which it holds itself accountable must be matters of public knowledge. Annual reports on the operation of the military justice system, statistics on courts martial and their outcomes, and information about the institutions and procedures through which complaints can be raised and investigated, should all be matters of public record that civil society can access and comment on.

CHAPTER EIGHTY: EMERGENCY POWERS, MARTIAL LAW, AND THE CONSTITUTIONAL LIMITS OF MILITARY AUTHORITY

80.1 The Constitutional Framework for Emergency Powers

The Constitution of Bangladesh contains provisions for the exercise of emergency powers in situations of national crisis. Article 141A of the Constitution provides for the declaration of a state of emergency by the President, on the advice of the Prime Minister, when the security or economic life of the Republic is threatened by war, external aggression, or internal disturbance. When a state of emergency is declared, the operation of certain fundamental rights guarantees may be suspended, and the Parliament's ordinary legislative powers are augmented. The Constitution also provides, in Article 141C, that Parliament may by law confer on the President the power to make laws with respect to emergency matters, and that such laws shall, if they so provide, have effect notwithstanding anything in the Constitution.

The emergency powers provisions of the Constitution are directly relevant to Bangladesh Air Force law in several ways. First, they provide the constitutional basis, within the existing constitutional framework, for the extension of the air force's peacetime legal framework into situations of national emergency. Second, they provide a constitutional framework within which the interaction between military and civilian authority in a national emergency is to be managed. Third, and most importantly for the purposes of this Part, they set the constitutional limits of the authority that can be exercised under emergency powers, including the limits on the suspension

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of fundamental rights and the limits of the military's constitutional role in an emergency situation.

The specific constitutional limits of emergency powers in Bangladesh have been the subject of extensive legal and political debate, particularly in the light of Bangladesh's history of military rule in which emergency powers or their de facto equivalents were used to establish military governance without the constitutional safeguards of the emergency provisions. The Constitution Reform Commission's January 2025 recommendations include proposals for tightening the constitutional regulation of emergency powers, for making the declaration of an emergency subject to parliamentary scrutiny and time limits, and for ensuring that the constitutional courts retain their jurisdiction during a state of emergency, so that the fundamental rights of persons affected by emergency measures can be protected.

80.2 Martial Law: Constitutional Status and Historical Context

The concept of martial law occupies a particularly important and contested place in Bangladesh's constitutional history. Martial law, in its traditional sense, refers to the direct governance of a territory by military authority, in which the military courts replace civilian courts and military command authority supersedes civilian governmental authority. In Bangladesh, martial law was imposed formally in 1975 after the assassination of Sheikh Mujibur Rahman, and again in 1982 under General Ershad. During these periods, the constitutional order was formally suspended, and the legal authority for all governmental action was derived from the Proclamations of Martial Law issued by the military rather than from the Constitution.

The constitutional status of martial law in Bangladesh has been one of the most contentious questions in the country's constitutional jurisprudence. The Supreme Court of Bangladesh, in several historic judgements, has grappled with the question of whether the acts of martial law governments are entitled to constitutional recognition, whether the judicial validation of martial law acts is consistent with constitutional principles, and what the constitutional implications are of the amendments to the Constitution that were made during and after periods of martial law to retrospectively legitimise military rule.

The famous Anwar Hossain Chowdhury v Bangladesh decision and subsequent jurisprudence of the Appellate Division of the Supreme Court established that certain provisions of the Constitution represent the basic structure of the constitutional order that cannot be destroyed even by formal constitutional amendment. The basic structure doctrine, derived from Indian constitutional jurisprudence and elaborated in the Bangladesh context, holds that the fundamental principles of the Constitution, including democracy, the rule of law, judicial independence, and the protection of fundamental rights, are entrenched against any form of destruction, whether through formal constitutional amendment, through the imposition of martial law, or through any other mechanism. This doctrine provides the constitutional foundation for the judgement that martial law governance, however formally legitimised by subsequent constitutional amendment, is fundamentally incompatible with the basic structure of Bangladesh's constitutional order.

For Bangladesh Air Force law, the constitutional rejection of martial law as a legitimate form of governance has direct implications. It means that the authority of air force officers over both

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military personnel and civilians derives exclusively from the Constitution and from statute, not from any general doctrine of martial law authority. It means that the air force has no legitimate authority to exercise jurisdiction over civilians except to the extent explicitly conferred by law and consistent with the Constitution. It means that the military justice system is a system of disciplinary law for military personnel, not a system of governance over the general population. And it means that the deployment of the air force in support of civil authority, including in situations of internal security, must be governed by law and by the constitutional principles of proportionality and respect for fundamental rights.

80.3 Aid to Civil Power: Constitutional Framework and Limits

The deployment of the Bangladesh Air Force in aid of civil power, meaning in support of the civil government and civil law enforcement authorities in situations of civil disturbance, disaster, or other emergency, raises important constitutional questions about the scope of military authority over civilians and the constitutional limits on the use of military force domestically.

The constitutional framework for aid to civil power in Bangladesh is not as comprehensively developed as it is in some comparable jurisdictions. The Air Force Act and the relevant provisions of the Penal Code and the Code of Criminal Procedure provide some legal framework for the deployment of the military in aid of civil authority, but the constitutional dimensions of this deployment, including the precise circumstances in which the use of lethal force by military personnel against civilians is constitutionally permissible, and the accountability mechanisms that apply when civilian casualties occur in the course of domestic military deployments, are not systematically addressed in the existing legislative framework.

The events of the July-August 2024 uprising in Bangladesh, in which security forces including military units were deployed against civilian protesters and in which at least 858 deaths were confirmed as of December 2024, brought the constitutional framework for the domestic use of security force into urgent and tragic focus. The interim government's Human Rights Watch report published in January 2025 identified specific allegations of unlawful use of force by security services against protesters, and the constitutional and legal accountability for these events is part of the broader reform agenda that the interim government and the Constitution Reform Commission have been addressing.

For air force law, the July-August 2024 events serve as a constitutional case study of the most serious kind. The use of air force assets or personnel in the suppression of civilian protest, in circumstances where that suppression involved unlawful use of lethal force, would raise the most serious questions of constitutional accountability, international humanitarian law compliance, and individual criminal responsibility. The constitutional framework for domestic military operations, including the precise limits of lethal force authority against civilian protesters and the chain of command accountability for its exercise, must be clearly established and understood by all air force officers, and it must be institutionally embedded in the doctrine, training, and professional culture of the service.

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CHAPTER EIGHTY-ONE: THE CONSTITUTIONAL RIGHTS OF SERVICE MEMBERS: SPECIFIC PROTECTIONS AND THEIR PRACTICAL IMPLICATIONS

81.1 Protection of Career Interests: Promotions, Postings, and the Right to Equal Treatment

The career interests of air force officers and airmen, including their interests in fair treatment in matters of promotion, posting, training opportunity, and separation from service, are protected by the constitutional guarantees of equality before the law, equal protection of the law, and equality of opportunity in public service. These guarantees apply to the employment relationship between the state and its military servants as much as to any other form of public employment.

The constitutional protection of career interests in the military context has a number of specific dimensions. First, the criteria applied in promotion and posting decisions must be lawful, rational, and non-discriminatory. Promotions in the Bangladesh Air Force must be based on assessments of professional merit, operational competence, and service record, not on personal connections, ethnic origin, religious affiliation, or political associations. The constitutional guarantee of equality of opportunity requires genuine merit-based assessment, not merely the formal absence of explicitly discriminatory criteria.

Second, the procedures through which promotion and posting decisions are made must be fair. Officers who believe they have been passed over for promotion that they deserved are entitled to know the basis of the decision, and to have their concerns heard by an appropriate authority. The constitutional principle of natural justice requires that decisions adversely affecting the career interests of officers be made in a procedurally fair manner, with adequate notice, an opportunity to make representations, and a reasoned explanation of the decision reached.

Third, the remedies available to officers who have suffered career disadvantage as a result of discriminatory or otherwise unlawful decisions must be genuine and effective. A constitutional right that cannot be enforced is not a right in any practical sense. The existence of grievance mechanisms within the military hierarchy, while valuable, is not a sufficient substitute for the right to seek constitutional redress from an independent court. The High Court Division's jurisdiction under Article 102 provides the constitutional remedy for officers whose career interests have been violated by unlawful decisions, and the practical availability of this remedy must not be circumscribed by institutional culture or informal pressure.

81.2 Protection of Reputation and Honour: Disciplinary Proceedings and Their Constitutional Dimensions

An officer of the Bangladesh Air Force has a legitimate interest in their professional reputation and honour, and the constitutional protection of this interest is part of the broader constitutional framework of fundamental rights. Disciplinary proceedings under the Air Force Act that result in findings of misconduct, that lead to demotion or dismissal from service, or that are recorded in an officer's service record, have significant consequences for the reputation and honour of the officer concerned. The constitutional requirements of procedural fairness, the right to a hearing, and the presumption of innocence all apply to these proceedings.

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The publication or disclosure of findings of misconduct in court martial proceedings raises specific constitutional questions about the balance between the public interest in transparency and accountability and the individual's interest in the protection of their reputation. The constitutional principle that proceedings should be public serves the value of transparency and enables civil society oversight of the military justice system. But the public disclosure of findings of misconduct that are later overturned on appeal, or that are found to have been based on inadequate evidence, can cause irreparable damage to an officer's reputation that cannot be fully remedied even by a successful appeal. The constitutional framework for the management of this tension between transparency and reputational protection requires careful development.

The prohibition on disciplinary action as retaliation for the exercise of constitutional rights is a fundamental constitutional principle with direct application to the military context. An officer who raises concerns about institutional misconduct, who reports an IHL violation, who challenges a disciplinary decision through legitimate channels, or who exercises any other constitutional right, must be protected from disciplinary retaliation for the exercise of that right. The Air Force Act's existing provisions do not provide comprehensive whistleblower protection, and the development of a clear and enforceable anti-retaliation framework is an important constitutional reform requirement.

81.3 Housing, Healthcare, and the Economic Rights of Service Members

The constitutional framework of Bangladesh does not, in its current form, include enforceable socioeconomic rights comparable to those found in the constitutions of some other democratic systems. The Principles of State Policy in Part II of the Constitution, which include commitments to the provision of basic necessities and the improvement of the conditions of life of all citizens, are non-justiciable in the sense that they cannot be directly enforced by courts as individual rights in the way that Part III fundamental rights can be. This distinction between justiciable and non-justiciable rights is relevant to the constitutional position of service members in relation to the conditions of their service.

However, the Constitution Reform Commission's January 2025 recommendations include a proposal to merge Part II and Part III of the Constitution into a single enforceable Bill of Rights, making the currently non-justiciable economic and social rights directly enforceable by courts. If this proposal is implemented through the constitutional reform process, it would have profound implications for the rights of service members in relation to the conditions of their service. Service members would acquire constitutionally enforceable rights to adequate housing, healthcare, and other social provisions as conditions of their employment, in addition to the civil and political rights that are already enforceable under Part III.

The implications of this constitutional change for air force law would be significant. The adequacy of housing provided to air force personnel and their families, the standards of healthcare available to personnel and their dependants, the occupational health and safety standards applied in air force workplaces, and the pension and welfare entitlements of retired personnel would all become matters subject to constitutional scrutiny rather than purely administrative determination. This would constitute a significant expansion of the constitutional

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rights of service members and would require corresponding expansion of the legal frameworks governing service conditions and welfare.

81.4 The Right to Privacy and the Intrusive Surveillance State in the Military Context

Article 43 of the Constitution guarantees to every citizen the right to the privacy of their home and to the protection of their correspondence and other means of communication. This constitutional right to privacy is directly relevant to the military context, where the surveillance, monitoring, and investigation of personnel's communications, movements, and activities are common institutional practices justified by the requirements of security, discipline, and operational integrity.

The constitutional right to privacy does not prohibit all surveillance and monitoring of air force personnel. The legitimate security interests of the air force, including the prevention of the leakage of classified information, the detection of security risks and potential intelligence vulnerabilities, and the investigation of suspected criminal conduct, provide constitutional justification for certain forms of monitoring and surveillance of personnel. But the constitutional principle of proportionality requires that surveillance be no more intrusive than necessary for the legitimate aim pursued, that it be authorised by appropriate legal framework rather than conducted at the discretion of individual officers, and that it be subject to appropriate oversight mechanisms to prevent abuse.

The digital age has fundamentally transformed the nature of surveillance and monitoring, and the constitutional right to privacy must be understood in the context of the new technological landscape. The monitoring of personnel's digital communications, their social media activities, their location data, and their online behaviour all raise constitutional questions that the existing Air Force Act and associated regulations do not address. The development of a constitutional and legal framework for digital surveillance of military personnel that complies with the proportionality principle and provides effective protection against abuse is an urgent requirement that the legislative framework has not yet addressed.

CHAPTER EIGHTY-TWO: THE CONSTITUTIONAL REFORM AGENDA OF 2024-2025 AND ITS IMPLICATIONS FOR AIR FORCE LAW

82.1 The July-August 2024 Uprising and Its Constitutional Significance

The mass uprising of July and August 2024, which brought down the government of Sheikh Hasina and inaugurated the constitutional reform process under the interim administration of Professor Muhammad Yunus, is the most significant constitutional event in Bangladesh since the liberation of 1971. Its implications for the constitutional framework of Bangladesh Air Force law are profound and require careful analysis.

The uprising was triggered by student protests against the quota system for government jobs, but its underlying causes were deeply rooted in the accumulated frustrations of fifteen years of

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authoritarian governance under the Awami League. The systematic suppression of fundamental rights, the manipulation of the electoral process, the politicisation of state institutions including the security forces, and the growing gap between the constitutional promises of Bangladesh's founding documents and the lived reality of political life under the Hasina government all contributed to the explosive political energy that manifested in the uprising.

For the armed forces, the uprising posed an institutional crisis of the most serious kind. The security forces, including police and other paramilitary units, were deployed against protesters in ways that resulted in hundreds of deaths and thousands of injuries. The military, by contrast, ultimately declined to use lethal force against the protesters and played a role in facilitating the political transition that brought the Hasina government to an end. The decision of the army chief, General Waker, to facilitate the transition rather than to defend the existing government, was a pivotal political decision with profound constitutional implications.

This decision reflects an understanding, shared by at least some within the military establishment, that the armed forces are ultimately the servants of the constitutional order and of the sovereign people, not the instruments of any particular government. When a government has so clearly lost the confidence of the people, as demonstrated by the mass uprising, the armed forces' constitutional obligation is to the constitution rather than to the incumbents of constitutional office. This is, of course, a deeply contested proposition in civil-military relations theory, and the specific circumstances of the July-August 2024 transition require careful analysis. But the outcome, in which the military facilitated rather than prevented a constitutional transition, is one that has been welcomed by democratic civil society and by the constitutional reform process that has followed.

For air force law, the July-August 2024 events raise a series of specific constitutional questions. Were any air force assets or personnel used in the suppression of the civilian uprising? If so, were those uses lawful under the Air Force Act, the Constitution, and international human rights law? What is the constitutional accountability of air force commanders for decisions made during the uprising? And what institutional changes are necessary to ensure that air force personnel, in any future situation of domestic political crisis, act within the framework of constitutional authority rather than at the direction of any particular government or political faction?

82.2 The Constitution Reform Commission: Proposals Relevant to Military Law

The Constitution Reform Commission's recommendations, submitted on 15 January 2025, contain a number of proposals that have direct relevance for the constitutional framework of Bangladesh Air Force law. While the Commission's primary focus was on the broader constitutional architecture of Bangladesh's political system rather than on the specific provisions of military law, several of its recommendations create a constitutional context within which the reform of military law must be understood.

The proposal to merge Part II and Part III of the Constitution into a single enforceable Bill of Rights, creating a constitutional framework in which socioeconomic rights are directly justiciable, has been discussed in the previous chapter. The proposal to strengthen the

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independence of the judiciary, including through enhanced security of tenure for judges and strengthened institutional independence for the Supreme Court, has direct implications for the constitutional courts' capacity to exercise genuine judicial review of military decisions. The proposal to establish a bicameral legislature with more robust parliamentary oversight mechanisms would create institutional capacity for parliamentary scrutiny of military affairs that the unicameral parliament has historically not provided.

The proposals for strengthening the accountability of security forces are particularly relevant for military law. The Commission's recommendations include proposals for the establishment of independent oversight institutions for the security sector, for the creation of effective complaint mechanisms for persons alleging misconduct by security forces, and for the constitutional entrenchment of the principle of civilian control of the armed forces. These proposals, if implemented, would create a constitutional framework more favourable to the constitutional accountability of the air force than has existed at any point in Bangladesh's history.

The proposal to delete Articles 7A and 7B of the Constitution, which were introduced to entrench constitutional changes made under authoritarian governance and to bar their further amendment, is constitutionally significant because it removes one of the mechanisms through which military and authoritarian governments have entrenched their changes to the constitutional order. The deletion of these provisions, and their replacement with a constitutional amendment mechanism that is more democratically responsive while still providing appropriate entrenchment for core constitutional values, would create a constitutional framework more resistant to authoritarian subversion.

82.3 The July National Charter of 2025 and Its Constitutional Significance

The July National Charter, signed on 17 October 2025 by the National Consensus Commission and twenty-four political parties, represents the political consolidation of the constitutional reform agenda, translating the technical recommendations of the Constitution Reform Commission into a politically negotiated document that can command the broad support necessary for constitutional reform. The Charter contains over eighty reform proposals, nearly half of them constitutional in character, and is scheduled for ratification through a referendum to be held in conjunction with the next general elections in February 2026.

The Charter's significance for Bangladesh Air Force law lies in several specific provisions. The Charter includes commitments to the principle of civilian control of the armed forces, to the political neutrality of military institutions, and to the accountability of security forces for violations of fundamental rights. These commitments, if translated into specific constitutional and legislative provisions through the reform process, would create the framework for a more genuinely constitutional military justice system and a more constitutionally accountable security sector.

The Charter also includes commitments to the strengthening of the judicial system and to the independence of the judiciary from executive control. A more independent and confident judiciary is more likely to exercise genuine constitutional judicial review of military decisions, which is essential for the constitutional accountability of the air force. The constitutional

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protection of judicial independence is therefore not only a matter of general constitutional importance but a specific requirement for the effective constitutional governance of the military justice system.

The political divisions among the twenty-four parties that signed the Charter, with significant dissent on a number of key provisions, create uncertainty about the scope and durability of the constitutional reforms that will ultimately be implemented. The experience of Bangladesh's previous constitutional amendments, many of which were either reversed or subverted in subsequent political transitions, counsels caution about the long-term prospects for any particular set of constitutional reforms. For air force law, this uncertainty means that the constitutional reform process must be engaged with seriously and constructively, but that the specific reforms of military law cannot wait for the conclusion of the broader constitutional process. Reform of the Air Force Act and the associated regulations is within the capacity of the existing Parliament and the interim government to initiate, and it should not be deferred pending the completion of the constitutional reform process.

82.4 The February 2026 Referendum: Constitutional Implications for Military Law

The scheduled February 2026 referendum on the constitutional reform agenda, including the proposals of the July National Charter, represents a constitutional moment of the first order. The referendum will ask the Bangladeshi people to determine the constitutional framework within which their state, including its military institutions, will operate for the foreseeable future. The outcome of the referendum will shape the constitutional context of Bangladesh Air Force law for a generation.

The military's institutional interest in the referendum process is direct and significant. The constitutional provisions relating to civilian control, judicial independence, parliamentary oversight, and fundamental rights all bear directly on the legal framework within which the air force operates. Officers of the Bangladesh Air Force have a professional and institutional interest in the outcome of the constitutional reform process, an interest in the establishment of a constitutional framework that is both genuinely democratic and effectively supportive of the air force's operational and professional requirements.

The appropriate stance of the Bangladesh Air Force in relation to the constitutional reform process is one of principled professional engagement. The air force should not seek to influence the constitutional reform process in the direction of weakening civilian oversight or entrenching military institutional autonomy against constitutional accountability. Rather, it should contribute its professional expertise to the development of a constitutional and legislative framework that effectively integrates the requirements of military effectiveness, professional discipline, and constitutional rights, and it should publicly commit to operating fully within whatever constitutional framework the sovereign people of Bangladesh choose for themselves through the democratic process.

This stance of principled constitutional engagement is not merely an expression of institutional deference. It reflects a deep understanding of the relationship between institutional legitimacy and constitutional order. An air force that operates within the framework of a genuinely

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constitutional democracy, subject to civilian oversight, judicial review, and parliamentary accountability, is an air force whose authority is legitimated by the democratic order. An air force that seeks to insulate itself from constitutional accountability is an air force whose authority rests ultimately on institutional power rather than democratic legitimacy. In the long run, constitutional legitimacy is the stronger foundation for institutional authority, and it is the foundation most consistent with the air force's own deepest values of service to the nation and to the constitutional order.

CHAPTER EIGHTY-THREE: COMPARATIVE CONSTITUTIONAL MODELS FOR MILITARY JUSTICE: LESSONS FOR BANGLADESH

83.1 The United Kingdom's Military Justice Reform: The Service Courts and the Armed Forces Act

The United Kingdom's experience of military justice reform over the past two decades provides one of the most instructive models for the reform of Bangladesh's military justice system, given the shared common law heritage of the two systems and the direct historical connection between British military law and Bangladesh Air Force law discussed in Part One of this handbook.

The Armed Forces Act 2006, which consolidated and reformed the separate military justice legislation for the Army, Navy, and Air Force, introduced significant constitutional improvements to the UK military justice system. The most notable of these was the establishment of a system of civilian judicial oversight through the Court Martial Appeal Court, which hears appeals from courts martial in the Service Courts system and applies civilian criminal law standards to the review of court martial proceedings. The Armed Forces Act also introduced the role of the Judge Advocate General, a civilian lawyer appointed by the Lord Chancellor who supervises the judge advocates in courts martial and ensures that legal standards are consistently applied.

The UK experience is particularly relevant for Bangladesh because it demonstrates that a constitutional democracy can maintain a distinctly military justice system for disciplinary purposes, while simultaneously ensuring that the constitutional guarantees of fair trial, judicial independence, and due process are effectively applied in that system. The key institutional innovation of the UK model is the combination of military-specific subject matter jurisdiction with civilian judicial oversight, through a structure that makes the military justice system answerable to the civil judiciary without eliminating the specialist expertise that a military-specific system can provide.

The proposal for civilian trial judges in military courts martial, made by leading military law scholar Eugene Fidell in his April 2025 article in Just Security, arguing for a series of UCMJ reforms as the code reached its seventy-fifth anniversary, reflects the direction of travel in advanced military justice systems. The argument that civilian judges bring a benefit in terms of public confidence, as demonstrated by the UK experience, is directly relevant to Bangladesh. The constitutional credibility of the court martial system in the eyes of the public, and of the

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international community, depends in part on the perception that the system provides genuinely independent and impartial adjudication. Civilian judges, whose independence from the military chain of command is structural rather than merely formal, provide a stronger institutional guarantee of this independence than military judges, however professionally committed those military judges may be to the standards of judicial impartiality.

83.2 The Canadian Model: Charter Rights and Military Justice

Canada's experience of applying Charter of Rights and Freedoms protections to the military justice system, developed through a substantial body of case law over more than three decades, is directly relevant to Bangladesh's constitutional reform of military law. The Canadian experience demonstrates both the constitutional necessity of applying rights guarantees in the military context and the institutional capacity of a military justice system to adapt to rights requirements without compromising its core functions of discipline and operational effectiveness.

The Supreme Court of Canada's April 2024 decision in R v Edwards, discussed in Chapter Seventy-Seven of this handbook, is the most recent landmark in the Canadian constitutional military jurisprudence. The decision's affirmation that military judges are entitled to judicial independence, and that the constitutional guarantee of trial by an independent and impartial tribunal applies fully in the court martial context, reflects the Canadian constitutional tradition's insistence that Charter rights are not diminished by the military context but may be applied in a manner that reflects the distinctive requirements of military service.

The Canadian model's most significant institutional innovation, from Bangladesh's perspective, is the external review mechanism of the Military Police Complaints Commission, which provides an independent civilian body with the power to investigate complaints about the military police and to make findings and recommendations. The existence of this institution, independent of the chain of command and accountable to Parliament rather than to the military hierarchy, provides a form of external oversight of military policing that is directly relevant to the Bangladesh context. The establishment of a comparable institution in Bangladesh, with the power to investigate complaints about the conduct of military investigators and the operation of the military justice system, would be an important constitutional reform.

Canada's 2022 military justice reforms, which removed the prosecution of sexual assault and other serious offences from commanding officer jurisdiction and vested it in independent military prosecutors, reflect the same reform trajectory that the United States implemented through the Office of Special Trial Counsel established by the FY2022 National Defense Authorization Act. Both reforms reflect the constitutional principle that the prosecution of serious criminal offences cannot be an instrument of command authority but must be an independent legal function subject to the standards of due process and prosecutorial impartiality. The Bangladesh Air Force Act's current structure, in which commanding officers retain significant influence over the disciplinary process, requires reform in light of this constitutional principle.

83.3 The Indian Experience: Civil-Military Constitutional Relations and Judicial Review

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India's experience of the constitutional relationship between military law and the civil legal order is directly relevant to Bangladesh, given the shared constitutional inheritance, the common membership of the common law tradition, and the historical connection between the Indian Army Act and the Bangladesh Air Force Act. The Supreme Court of India has developed, over more than seven decades, a substantial body of constitutional jurisprudence on the application of fundamental rights to military personnel, on the scope of judicial review of military decisions, and on the constitutional limits of military authority.

The Indian Supreme Court has consistently affirmed that military personnel are entitled to the protection of the fundamental rights guaranteed by Part III of the Indian Constitution, that they are not a class of persons excluded from constitutional protection, and that the civil courts have jurisdiction to review the decisions of military authorities for conformity with constitutional standards. At the same time, the Indian courts have developed a doctrine of proportionate deference in the military context, recognising that the courts should not second-guess operational military judgements and should accord a significant margin of discretion to military authorities in matters falling within their professional competence.

The Indian precedents on the constitutional review of promotion and posting decisions in the armed forces are particularly relevant for Bangladesh. The Indian Supreme Court has held, in a series of decisions, that officers passed over for promotion are entitled to know the reasons for the decision, that the selection criteria must be reasonable and non-discriminatory, and that the courts have jurisdiction to intervene where the selection process is tainted by arbitrariness or improper considerations. These principles have been developed in the context of the Indian Army's system of promotion selection, but they are applicable, by analogy, to the Bangladesh Air Force's promotion system and provide a useful framework for the development of Bangladesh's own constitutional jurisprudence in this area.

The Indian experience also includes important jurisprudence on the constitutional position of military courts. The Supreme Court of India has grappled with the question of whether courts martial constitute courts within the meaning of the constitutional guarantee of a fair trial, and whether the constitutional protection against double jeopardy applies to the relationship between disciplinary proceedings and criminal prosecutions in the military context. These questions are equally relevant in the Bangladesh context, and the Indian jurisprudence, while not binding on Bangladesh's courts, provides valuable guidance for the development of Bangladesh's own constitutional military jurisprudence.

83.4 The German Grundgesetz Model: Military Personnel as Citizens in Uniform

The German constitutional framework for military service, established under the Grundgesetz of 1949 and developed through subsequent legislation and judicial interpretation, represents one of the most constitutionally sophisticated models of the relationship between military service and fundamental rights in any democratic constitutional system. The German model explicitly adopts the concept of the soldier as a citizen in uniform, and it provides a comprehensive legal framework, the Soldatengesetz (Military Service Act), that gives specific expression to this concept across the full range of military service conditions.

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The Grundgesetz's approach to military service reflects the particular historical context of post-war Germany, in which the creation of the Bundeswehr (Federal Armed Forces) was subject to intense public and political scrutiny precisely because of the role that the Wehrmacht had played in the crimes of the Nazi regime. The Bundeswehr was established with an explicit commitment to preventing a repetition of that history, through institutional arrangements designed to ensure that the armed forces were firmly subordinated to civilian constitutional control, that soldiers were rights-bearing citizens whose fundamental rights were protected within the military institution, and that the armed forces operated within a framework of democratic accountability that made a repetition of the military's catastrophic autonomy of the Nazi period impossible.

The German model's concept of Innere Fuhrung (leadership from within), which provides the philosophical framework for the Bundeswehr's institutional culture, holds that the soldier is not merely an instrument of the state but a moral agent who bears personal responsibility for the exercise of judgment within the framework of the military's professional and constitutional obligations. This concept directly addresses the problem of command responsibility and the limits of obedience that was raised so powerfully by the Nuremberg trials and by Bangladesh's own founding history of military personnel who chose to resist criminal orders.

For Bangladesh Air Force law, the German constitutional model provides a sophisticated philosophical framework for thinking about the relationship between institutional discipline, individual rights, and constitutional obligation. The concept of the officer as a citizen in uniform, bearing constitutional rights and constitutional obligations simultaneously, is consistent with both the requirements of effective military discipline and the demands of constitutional democracy. It provides an alternative to the binary choice between total institutional subordination (which is inconsistent with constitutional rights) and complete individual autonomy (which is inconsistent with effective military discipline), offering instead a model of disciplined constitutional citizenship that is at once professionally effective and constitutionally legitimate.

CHAPTER EIGHTY-FOUR: THE CONSTITUTIONAL REFORM IMPERATIVE FOR BANGLADESH AIR FORCE LAW

84.1 The Case for Legislative Reform: Bringing the Air Force Act into Constitutional Alignment

The analysis of this Part, when taken together with the analysis of preceding Parts of this handbook, leads to a clear and compelling conclusion: the Air Force Act of 1953, as it currently stands, does not fully comply with the constitutional standards established by the Constitution of Bangladesh, and significant legislative reform is necessary to bring it into full constitutional alignment. This is not a counsel of despair about the existing system, nor is it a criticism of the many dedicated professionals who administer that system with integrity and competence. It is an honest assessment of the gap between the constitutional ideal and the legislative reality, and an argument for the reform that would close that gap.

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The specific reforms that are needed, viewed from the constitutional perspective developed in this Part, fall into several categories. The first category consists of reforms to the structure of the court martial system to enhance judicial independence and impartiality, including the introduction of legally qualified judges with guaranteed tenure, the separation of the prosecutorial function from the chain of command for serious offences, and the strengthening of the appellate structure to provide genuine external review of court martial proceedings.

The second category consists of reforms to the procedural safeguards available to accused persons, including comprehensive disclosure requirements, enhanced legal representation provisions, clear protections against self-incrimination in the investigative process, and robust anti-retaliation provisions for those who exercise their legal rights within the system.

The third category consists of reforms to the administrative law framework governing career decisions, including promotions, postings, and separation from service, to ensure that these decisions are made in compliance with the constitutional requirements of equal treatment, procedural fairness, and non-arbitrariness.

The fourth category consists of reforms to the oversight and accountability framework, including the establishment of an independent military complaints mechanism, enhanced parliamentary scrutiny of military justice statistics and outcomes, and improved transparency in the operation of the military justice system.

The fifth category consists of reforms to address the gap between the Air Force Act's provisions and the constitutional requirements that have emerged from the constitutional reform process of 2024-2025, including any new constitutional provisions relating to the rights of service members, the accountability of security forces, and the conditions for the domestic deployment of military force.

84.2 The Role of the Judge Advocate General in Constitutional Reform

The office of the Judge Advocate General of the Bangladesh Air Force occupies a pivotal position in the constitutional reform of military justice. The JAG is simultaneously the chief legal adviser to the air force, the institutional guardian of legal standards in the military justice system, and the professional leader of the military legal community. In these multiple roles, the JAG is both the primary advocate for constitutional compliance within the system and the principal institutional actor through whom constitutional reform of the system must be channelled.

The effective discharge of the JAG's role in the constitutional reform context requires both professional legal expertise and institutional courage. The ability to identify constitutional deficiencies in the existing system, to develop reform proposals that would address those deficiencies while preserving the legitimate institutional interests of the air force, and to advocate effectively within the military hierarchy and in the broader policy process for the adoption of those reforms, requires a combination of legal scholarship, professional judgment, and institutional authority that is demanding in the extreme.

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The development of a strong and constitutionally sophisticated military legal culture, centred on the JAG's office and extending through all legally qualified officers of the air force, is a prerequisite for the constitutional reform of air force law. This culture must be grounded in a genuine commitment to constitutional values, not merely a technical compliance orientation. It must be capable of engaging with the philosophical and theoretical dimensions of military jurisprudence, as well as its practical and procedural aspects. And it must be willing to advocate for change, even where that change is uncomfortable for institutional authority, when the requirements of constitutional compliance demand it.

84.3 Constitutional Compliance as Professional Obligation

The argument of this Part, in its deepest dimension, is not merely that the Air Force Act should be reformed to comply with the Constitution, important as that legislative task is. It is that every officer of the Bangladesh Air Force has a personal professional obligation to act in compliance with the Constitution, in every aspect of their service, regardless of whether the existing legislation has been fully reformed to reflect constitutional standards. Constitutional compliance is not merely a rule imposed on the officer by law. It is an expression of the officer's professional commitment to the values of the service and to the constitutional order that the service exists to defend.

This means that when an officer exercises disciplinary authority over a subordinate, they must exercise it in a manner that respects the subordinate's constitutional rights, even in the absence of specific statutory provision requiring this. It means that when an officer participates in a court martial as a member of the court, they must bring to that function the constitutional commitment to impartiality and fair process, even if the institutional culture of the service has not always made that commitment explicit. It means that when an officer is appointed to investigate an allegation of misconduct, they must conduct that investigation in a manner that is consistent with the constitutional rights of all persons involved, the accuser, the accused, and any witnesses, even if the formal investigative procedures prescribed by the Air Force Act fall short of constitutional standards.

The constitution imposes obligations on officers not as external constraints on their authority but as intrinsic elements of the professional role that they have undertaken. The Bangladesh Air Force exists to defend the constitutional order of Bangladesh. An officer who violates that constitutional order in the exercise of their duties is not merely breaking a rule. They are betraying the fundamental purpose of the institution to which they belong and the oath that they took when they assumed their commission. Constitutional compliance, in this sense, is not a limitation on professional effectiveness. It is a constitutive element of professional integrity, and its consistent pursuit is both the individual obligation of every officer and the collective responsibility of the institution as a whole.

CHAPTER EIGHTY-FIVE: PHILOSOPHICAL AND JURISPRUDENTIAL FOUNDATIONS OF CONSTITUTIONAL MILITARY LAW

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85.1 Natural Law and the Constitution: Philosophical Underpinnings of Military Constitutional Obligation

The relationship between air force law and the constitutional order cannot be fully understood through positive law analysis alone, through the reading of statutes, the citation of judicial decisions, and the application of legal rules. It requires engagement with the philosophical foundations of law itself, and in particular with the tradition of natural law philosophy that has shaped Western legal theory from ancient Greece through Roman law and medieval Christian jurisprudence to modern constitutional thought. Natural law theory, in its various forms, holds that there are moral standards to which positive law must conform in order to be genuinely binding, that legal rules that violate fundamental moral principles are not truly laws and do not create genuine obligations, and that the authority of law is ultimately derived not from the command of the sovereign alone but from its conformity with deeper principles of justice, dignity, and reason.

The natural law tradition is directly relevant to the constitutional dimensions of air force law in several ways. The constitutional guarantees of fundamental rights, which provide the constitutional standard against which air force law must be measured, themselves rest on natural law foundations. The rights to life, liberty, dignity, and fair treatment that the Constitution protects are not merely legal constructs created by the constituent assembly. They are expressions, in the positive law of the Constitution, of moral principles that precede and transcend any particular constitutional text. The constitutional order of Bangladesh, rooted in the liberation struggle against oppression and in the aspiration for a society of justice and human dignity, reflects the natural law insight that legitimate political authority must be grounded in and consistent with the fundamental moral requirements of the human condition.

In the specific context of air force law, the natural law tradition provides the philosophical foundation for the principle that military obedience has limits. The obligation to obey lawful military orders, which is a cornerstone of military discipline, is grounded in the legitimacy of the authority that issues those orders. An order is lawful, in the natural law sense, not merely because it was issued by a person with the formal authority to give orders but because it is consistent with the moral standards that legitimate authority is bound to observe. An order to torture a prisoner, to execute a civilian hostage, or to fire on peaceful protesters exercising constitutional rights is not a lawful order, regardless of the formal authority of the person who issues it, because it violates the moral standards that define the limits of legitimate military authority. The officer who obeys such an order is not discharging a military obligation. He is committing a crime and betraying the constitutional order that his service is supposed to defend.

The natural law foundation of constitutional military obligation is connected to the broader jurisprudential tradition of human rights, which holds that every human being possesses a dignity that cannot be destroyed by the exercise of political or military power and that gives rise to rights that all authorities, including military authorities, are bound to respect. The Universal Declaration of Human Rights, adopted by the United Nations General Assembly in 1948 in the immediate aftermath of the Second World War's revelations of what happens when military and political power is exercised without constitutional constraint, is the most important modern expression of this natural law tradition in the context of international human rights law.

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Bangladesh's constitutional fundamental rights are directly connected to this international human rights tradition, and their interpretation must be informed by the philosophical principles that ground the international human rights framework.

85.2 Legal Positivism and Its Limits in the Military Context

The philosophical tradition of legal positivism, most powerfully articulated by John Austin in the nineteenth century and by H.L.A. Hart in the twentieth, holds that law is a social fact, a system of rules whose validity is determined by reference to sources recognised as authoritative within the legal system, rather than by reference to moral standards. In the military context, legal positivism provides a useful analytical tool for understanding the sources and structure of air force law: the Air Force Act is law because it was enacted by the Parliament in accordance with the constitutional procedure for legislation; the regulations made under the Act are law because they were made by the authority empowered by the Act to make them; and the usages of the service are law because the Act itself recognises them as such.

But legal positivism, taken to its extremes, generates conclusions in the military context that are morally and constitutionally unacceptable. Pure legal positivism would suggest that the legitimacy of military authority depends only on its formal legal source, that an officer is obliged to obey any order that is formally issued by a person with the relevant authority, and that the moral quality of the order is legally irrelevant. This positivist logic, followed to its conclusion, provides the philosophical justification for the defence of superior orders, the argument rejected at Nuremberg, that the soldier who commits atrocities in obedience to military orders bears no legal responsibility because he was merely executing lawful authority.

The rejection of pure legal positivism in the military context is therefore not a philosophical luxury but a moral and legal necessity. The constitutional framework of Bangladesh, which grounds military authority in constitutional legitimacy and subjects it to constitutional standards of fundamental rights, represents a form of constitutional positivism that incorporates natural law values into the structure of positive law. The constitutional guarantee of fundamental rights, the constitutional prohibition on torture and cruel treatment, and the constitutional requirement of judicial independence are all expressions of moral principles that have been given positive legal force through the Constitution. The constitutional lawyer working with air force law operates in a framework that is simultaneously positivist in its form and natural law in its substance, and this combination is precisely what a constitutional democracy requires.

85.3 Ronald Dworkin's Rights-Based Constitutional Theory and Its Application to Military Law

Ronald Dworkin's rights-based theory of constitutional law, developed in his works Taking Rights Seriously (1977), A Matter of Principle (1985), and Law's Empire (1986), offers a powerful philosophical framework for understanding the relationship between constitutional rights and military law. Dworkin's central insight is that constitutional rights function as trumps in legal argument: they override policy considerations, institutional interests, and majority preferences when the two are in conflict, precisely because rights express a commitment to treating persons as individuals with dignity rather than as mere instruments of collective goals.

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In the military context, Dworkin's rights-as-trumps analysis provides a philosophical framework for resolving the tension between the institutional interests of the air force and the individual rights of service members. When an air force institution claims that a particular restriction on the rights of service members is justified by military necessity, the rights-as-trumps analysis requires that this claim be subjected to serious scrutiny rather than accepted deferentially. If the restriction genuinely serves an overriding military necessity that cannot be achieved by less rights-restrictive means, then the restriction may be constitutionally justified. But if the military necessity argument is speculative, exaggerated, or serves institutional interests rather than operational requirements, the rights of the individual service member trump the institutional claim.

Dworkin's approach also emphasises the interpretive dimension of constitutional law, the point that constitutional rights do not have fixed meanings determined by the original intent of those who drafted them but must be interpreted in light of the principles that underlie the constitutional text and the evolving understanding of those principles in the constitutional community. This interpretive approach is directly relevant to the application of the Bangladesh Constitution's fundamental rights to the specific circumstances of air force service, many of which were not contemplated by those who drafted the 1972 Constitution. The constitutional courts of Bangladesh, in interpreting the fundamental rights provisions of the Constitution in the military context, are engaged in exactly the kind of principled interpretation that Dworkin's theory describes: developing the implications of constitutional principles in circumstances that the framers did not specifically anticipate.

85.4 Jurgen Habermas's Discourse Ethics and the Legitimacy of Military Law

The German philosopher Jurgen Habermas's discourse ethics, developed most fully in The Theory of Communicative Action (1981) and Between Facts and Norms (1992), offers a distinctive philosophical foundation for understanding the legitimacy of legal systems, including military legal systems. Habermas's central claim is that the legitimacy of law depends on its capacity to be rationally justified to all those who are subject to it through processes of open, inclusive, and rational discourse. A legal rule is legitimate, in Habermas's account, not merely because it was enacted by the appropriate authority but because it could in principle be agreed to by all those affected by it, reasoning from the standpoint of impartial concern for the interests of all persons.

The application of Habermas's discourse ethics to military law raises challenging questions. The military justice system, as an institution characterised by hierarchy, command authority, and the exclusion of external voices from deliberative processes, does not obviously meet the conditions of rational discourse that Habermas's theory requires. But the Habermasian framework does not require that every legal decision be made through open democratic deliberation. It requires that the legal system as a whole be capable of justification through rational discourse, that its basic principles be defensible in terms that all affected parties could accept from an impartial standpoint, and that mechanisms exist through which those affected by military legal decisions can have their voices heard.

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The constitutional framework of Bangladesh Air Force law, interpreted through the Habermasian lens, points to the importance of the procedural dimensions of military justice: the due process requirements, the rights of the accused to be heard, the mechanisms of review and appeal, and the openness of the system to external scrutiny. A military justice system that is procedurally fair, that provides genuine opportunities for all affected parties to present their case, that is transparent in its operation and accountable for its outcomes, can meet the Habermasian standard of discursive legitimacy even within the hierarchical context of military service. A military justice system that is arbitrary, secretive, and dominated by command authority cannot.

85.5 John Rawls's Theory of Justice and the Constitutional Position of Military Personnel

John Rawls's theory of justice, developed in A Theory of Justice (1971) and Political Liberalism (1993), provides a foundational framework for thinking about the principles that should govern the basic institutions of a just society. Rawls's veil of ignorance thought experiment, in which persons choosing the principles of justice do not know their own social position, natural talents, or life circumstances, provides a powerful method for identifying principles of justice that are fair to all members of society.

Applied to the constitutional framework of military service, Rawlsian theory has several important implications. First, the Rawlsian framework requires that the basic structure of military service be fair to military personnel, meaning that persons contemplating military service from behind the veil of ignorance would be able to agree to the conditions of service. A military justice system that denies accused persons fair trial rights, that subjects personnel to arbitrary punishment, that discriminates on the basis of personal characteristics unrelated to professional merit, or that exposes personnel to conditions of service that are unduly harsh and preventable is a system that free and equal persons would not agree to from behind the veil of ignorance. It is therefore, in Rawlsian terms, an unjust system that requires reform.

Second, the Rawlsian framework provides a specific analysis of the justification for differential treatment of military personnel. The principle of justice in Rawls's theory permits inequalities, including the restrictions on freedom that military service involves, only if they serve the interests of the least advantaged members of society. Military service, understood as a professional calling, involves significant restrictions on freedom, significant risks to life and health, and significant demands on the personal and family life of service members. These restrictions and demands are justified, in Rawlsian terms, only if the system of military service as a whole is organised on terms that provide fair compensation for these burdens, genuine protection of the rights and interests of service members, and appropriate welfare provisions for those who serve and their families.

Third, the Rawlsian principle of fair equality of opportunity requires that access to positions of advantage within the air force, including positions of command and the most prestigious and rewarding assignments, be genuinely open to all qualified persons, without discrimination. The constitutional principle of equal opportunity in public service under Article 29 of the Bangladesh Constitution is a direct expression of this Rawlsian principle, and its effective implementation requires not merely the formal removal of discriminatory barriers but genuine institutional commitment to the cultivation of talent from all sections of Bangladesh's diverse society.

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CHAPTER EIGHTY-SIX: THE POLITICAL DIMENSIONS OF MILITARY CONSTITUTIONAL LAW

86.1 The Military and Politics: Constitutional Norms and Political Realities

The relationship between the military and politics is one of the most sensitive and consequential questions in any state's constitutional order, and it is a question that has particular urgency in Bangladesh given the country's history of military governance. The constitutional principle of civilian control of the military, and the related principle of military political neutrality, establish a normative framework for this relationship, but the translation of this normative framework into political reality requires more than constitutional text. It requires institutional culture, professional norms, incentive structures, and a system of accountability that effectively maintains the boundary between the military's professional sphere and the political sphere of elected government.

The political dimensions of military constitutional law are not confined to the dramatic episodes of coup and military governance that have punctuated Bangladesh's history. They are present in the everyday operation of the defence establishment: in the relationship between the Chief of Air Staff and the Minister of Defence, in the processes through which the air force's budget is determined and its procurement decisions are made, in the procedures through which the civilian government exercises oversight of the air force's operations, and in the institutional culture that determines whether air force officers see themselves primarily as servants of the constitutional order or as independent institutional actors with their own political interests and perspectives.

The constitutional framework for the military-political relationship in Bangladesh, as it is being reformed through the constitutional reform process of 2024-2025, must address both the formal structures of civilian oversight and the informal dimensions of the military-political relationship. Formal structures alone are not sufficient: Bangladesh has had formal constitutional structures of civilian government throughout its history, yet military power has repeatedly exceeded constitutional bounds. What is needed, in addition to formal constitutional provisions, is a military institutional culture that genuinely internalises the principle of constitutional subordination to civilian authority, and a political culture that treats the armed forces with the respect and resources that professional military service deserves, without seeking to instrumentalise the military for partisan political purposes.

86.2 Politicisation and Depoliticisation of the Military: The Constitutional Reform Challenge

The politicisation of the Bangladesh military, meaning the identification of the military institution or of individual military officers with particular political parties or political agendas, is one of the most persistent and damaging constitutional pathologies in Bangladesh's history. The use of the military to support particular political parties, the appointment of politically affiliated officers to senior command positions, and the deployment of military authority to

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advance partisan political interests all violate the constitutional principle of military political neutrality and damage both the military's institutional integrity and the broader democratic order.

The depoliticisation of the military, meaning the restoration and maintenance of genuine military political neutrality, is therefore one of the most important objectives of the constitutional reform process. This requires, in the first place, clear constitutional prohibition of the use of military resources, including personnel, materiel, and institutional authority, for partisan political purposes. It requires, in the second place, the development and enforcement of professional standards that prohibit individual military officers from active political involvement, including membership of political parties, public advocacy for partisan political positions, and use of military rank or institutional authority to promote political goals. It requires, in the third place, effective accountability mechanisms for violations of military political neutrality, mechanisms that operate independently of the political preferences of the government of the day.

For the Bangladesh Air Force specifically, the challenge of institutional depoliticisation requires attention both to the formal provisions of the Air Force Act and associated regulations and to the informal institutional culture of the service. The formal provisions must clearly prohibit political activity by serving officers and must provide effective sanctions for violations of this prohibition. The informal culture of the service must actively cultivate the professional norm of political neutrality, making clear through training, mentorship, and the models of leadership that senior officers provide, that political involvement is incompatible with professional military service.

86.3 Defence Budget and Resource Allocation: Constitutional Accountability for Military Expenditure

The constitutional accountability of the military for the use of public resources is a dimension of the broader constitutional principle of public accountability that is often underemphasised in the legal literature on military law. The Bangladesh Air Force, like all military institutions, consumes significant public resources: personnel costs, equipment procurement, infrastructure maintenance, training, and operational costs all represent substantial claims on the public purse. The constitutional framework of public accountability requires that these resources be used for the purposes for which they are appropriated, that procurement decisions be made in accordance with law and with the principles of transparency and value for money, and that the Parliament and the public have genuine access to information about how military resources are being used.

The intersection of military secrecy and public accountability is one of the most difficult constitutional management problems in democratic governance. Military procurement, base development, and operational planning inevitably involve information that would be harmful to national security if publicly disclosed. But the legitimate need for secrecy in specific areas cannot justify a general blanket of secrecy over military expenditure and procurement that makes it impossible for Parliament and the public to exercise meaningful oversight. The constitutional principle of proportionality, applied to the balance between secrecy and transparency in military affairs, requires that secrecy be limited to information whose disclosure would genuinely cause specific and identifiable national security harm, and that the default position be one of transparency and accountability consistent with the constitutional values of democratic governance.

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CHAPTER EIGHTY-SEVEN: CONSOLIDATION: THE CONSTITUTIONAL VISION FOR BANGLADESH AIR FORCE LAW

87.1 A Summary of the Constitutional Principles Developed in this Part

Part Seven of this handbook has developed, across its thirteen chapters, a comprehensive account of the constitutional dimensions of Bangladesh Air Force law. The analysis has proceeded from the foundational constitutional framework of military authority in Bangladesh, through the application of specific fundamental rights to service members, through the constitutional requirements of the court martial system, through the principles of civilian oversight and the imperative of constitutional reform, through the comparative constitutional models of other jurisdictions, through the philosophical foundations of constitutional military law, and through the political dimensions of civil-military relations. It is appropriate, in conclusion, to bring together the principal constitutional principles that have emerged from this analysis and to articulate the constitutional vision for Bangladesh Air Force law that they collectively support.

The first constitutional principle is the principle of constitutional supremacy: the Air Force Act and all exercises of power under it must be consistent with the Constitution of Bangladesh, and the constitutional fundamental rights of service members are not diminished by the fact of military service.

The second constitutional principle is the principle of rights modification with justification: military service may require modifications in the exercise of constitutional rights, but those modifications must be justified by specific and genuine military necessity, must be proportionate to the necessity invoked, and must not go beyond what is required by that necessity.

The third constitutional principle is the principle of judicial accessibility: service members who believe their constitutional rights have been violated must have genuine and practical access to the constitutional courts for redress, and the courts must exercise their jurisdiction with appropriate rigour rather than undue deference to military institutional authority.

The fourth constitutional principle is the principle of fair trial: persons subjected to court martial must receive the full protection of the constitutional guarantee of trial by an independent and impartial tribunal, with all the procedural rights that the constitutional standard of fair trial requires.

The fifth constitutional principle is the principle of civilian accountability: the air force is constitutionally subject to civilian oversight through parliamentary scrutiny, ministerial accountability, and judicial review, and the exercise of all military authority must be accountable within this framework of civilian constitutional control.

The sixth constitutional principle is the principle of political neutrality: the Bangladesh Air Force is the servant of the constitutional order and not of any particular government, political party, or

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political ideology, and all service members are bound by a professional and constitutional obligation of political neutrality.

The seventh constitutional principle is the principle of proportionate force: the use of military force against persons, whether in domestic deployment, in armed conflict, or in any other context, must be proportionate to the legitimate aim pursued, must comply with the constitutional prohibition on torture and cruel treatment, and must be consistent with the international humanitarian law obligations that Bangladesh has assumed.

The eighth constitutional principle is the principle of constitutional culture: beyond formal legal compliance, the constitutional values of the Bangladesh state must be internalised as genuine professional commitments by every officer of the air force, expressed through the daily practice of fair, proportionate, and humane exercise of military authority.

87.2 The Institutional Change Agenda: Priorities for Reform

The constitutional vision articulated in the preceding section points to a specific institutional change agenda for Bangladesh Air Force law. The priority reforms, presented in order of their urgency and constitutional significance, are as follows.

The first priority reform is the comprehensive review of the Air Force Act of 1953 with a view to identifying and addressing all provisions that are inconsistent with the constitutional standards of fundamental rights, fair trial, and judicial independence. This review should be undertaken by a legal expert body with both constitutional law expertise and military law expertise, should draw on the comparative experience of military justice reform in other jurisdictions, and should result in specific legislative amendments that bring the Act into full constitutional alignment.

The second priority reform is the structural reform of the court martial system to provide genuinely independent and impartial adjudication in the most serious cases, through the introduction of legally qualified judges with appropriate tenure security, the separation of prosecutorial authority for serious offences from commanding officer control, and the strengthening of the appellate structure to provide effective external review.

The third priority reform is the development of comprehensive legal aid provisions for accused persons facing court martial, ensuring that all persons subjected to court martial proceedings have access to competent legal representation regardless of their personal financial resources.

The fourth priority reform is the establishment of an independent oversight institution for military conduct, with the power to receive and investigate complaints from service members and civilians, to make findings and recommendations, and to report to Parliament rather than to the military hierarchy.

The fifth priority reform is the development of a comprehensive framework for domestic military deployments, specifying the constitutional and legal conditions for the use of military force against civilians, the chain of command accountability for such use, and the accountability mechanisms applicable when civilian casualties occur.

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The sixth priority reform is the constitutional entrenchment of the principle of military political neutrality, through specific constitutional provisions prohibiting the use of military authority for partisan political purposes and establishing enforcement mechanisms that operate independently of partisan political control.

The seventh priority reform is the development of a comprehensive training programme for all air force officers in constitutional law and fundamental rights, ensuring that every officer understands the constitutional framework within which their authority operates and the constitutional obligations that their professional role entails.

87.3 The Constitution as the Air Force's Deepest Commitment

There is a dimension of the argument of this Part that goes beyond the technical requirements of constitutional compliance and touches on the deepest values of the air force as an institution. The Bangladesh Air Force was born in the liberation struggle, in the act of resistance to oppression and injustice that gave Bangladesh its independence. The foundational act of the Bangladesh Air Force was a constitutional act in the deepest sense: the act of serving a people's legitimate aspiration for self-determination, freedom, and constitutional government against a power that had proven itself willing to use military force to deny those aspirations.

The Bangladesh Air Force carries that founding constitutional commitment in its institutional DNA. Every time an officer of the air force acts in conformity with the constitutional order, treats a subordinate with dignity and fairness, conducts an investigation with integrity, exercises disciplinary authority proportionately and lawfully, or speaks out against an institutional injustice through legitimate channels, that officer is continuing the founding act of constitutional commitment that gave the air force its legitimacy and its meaning. And every time an officer acts unconstitutionally, violates the rights of a subordinate, abuses disciplinary authority, or allows institutional loyalty to override constitutional obligation, that officer is betraying the founding commitment and diminishing the institution's claim to the respect and support of the Bangladeshi people.

The Constitution, in this deepest sense, is not an external constraint on the Bangladesh Air Force. It is the expression of the values that the air force exists to defend. Constitutional compliance is not a burden imposed on the institution from outside. It is the realisation of the institution's own deepest purpose. An air force that is genuinely committed to the constitutional order is an air force that has understood what it means to serve Bangladesh, and it is that understanding, more than any technical reform of statutes or procedures, that will ensure the legitimacy and effectiveness of the institution in the years and decades to come.

APPENDIX TO PART SEVEN: THE 2024-2025 CONSTITUTIONAL REFORM TIMELINE AND ITS MILITARY LAW DIMENSIONS

A7.1 Chronology of Key Constitutional Events

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July 15, 2024: Student protests against government job quota system begin at universities across Bangladesh. The protests quickly acquire a broader political character as accumulated grievances about the Hasina government's authoritarianism become the context for mass mobilisation.

July 19-20, 2024: Security forces, including police and paramilitary units associated with the Awami League, deploy lethal force against protesters. Hundreds are killed or injured. Internet blackouts are imposed. The use of force escalates the political crisis dramatically.

August 5, 2024: Mass protests reach a critical threshold. Sheikh Hasina resigns as Prime Minister and leaves Bangladesh. Army chief General Waker announces the formation of an interim government and the dissolution of Parliament.

August 8, 2024: Professor Muhammad Yunus is sworn in as Chief Adviser of the interim government. The interim government announces a comprehensive reform agenda, pledging to address the constitutional deficiencies that enabled the Hasina government's authoritarianism.

September 2024: The Constitution Reform Commission is established under the chairmanship of Professor Ali Riaz of Illinois State University, with a mandate to review the constitutional framework and propose reforms. The Commission includes eight members and thirty-two researchers, working on a pro bono basis.

November 2024: The Constitution Reform Commission receives over fifty thousand submissions from individuals and political entities, including more than twenty-five complete drafts of a new constitution. The volume and diversity of submissions reflects the depth of public engagement with the constitutional reform process.

January 15, 2025: The Constitution Reform Commission submits its recommendations to the Chief Adviser. The recommendations include over eighty specific proposals, including the merger of Parts II and III into a single enforceable Bill of Rights, the deletion of Articles 7A and 7B, the introduction of a bicameral legislature, and the strengthening of judicial independence.

February-September 2025: The National Consensus Commission, established to translate the Commission's recommendations into a negotiated political document, conducts consultations with political parties, civil society organisations, and other stakeholders. The process is complicated by significant disagreements among parties on key issues.

October 17, 2025: The July National Charter is signed by the National Consensus Commission and twenty-four political parties. The Charter contains over eighty reform proposals, nearly half constitutional in character. Significant dissent is noted by several parties on specific provisions.

November 13, 2025: The President issues the July National Charter (Constitution Reform) Implementation Order 2025, giving the Charter legal force and providing for a referendum to be held on the same day as the next general elections.

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February 2026 (scheduled): Referendum on the constitutional reform agenda. The outcome of the referendum will determine the constitutional framework of Bangladesh for the foreseeable future, including the constitutional framework within which the Bangladesh Air Force operates.

A7.2 Key Proposed Constitutional Changes and Their Military Law Implications

The merger of Parts II and III into a single enforceable Bill of Rights would make socioeconomic rights including housing, healthcare, and welfare provisions directly justiciable by courts. For the Bangladesh Air Force, this would create constitutional entitlements for service members to adequate conditions of service, enforceable by the constitutional courts.

The deletion of Articles 7A and 7B, which were introduced to entrench changes made under authoritarian governance, would remove mechanisms that have been used to give permanent constitutional status to changes made outside the normal democratic process. This would restore the Constitution's amendability to full democratic control and would eliminate one of the constitutional tools that military and authoritarian governments have used to entrench their changes to the constitutional order.

The introduction of a bicameral legislature, with distinct oversight functions for each house, would create greater parliamentary capacity for oversight of defence and military affairs. A dedicated defence and security committee in the upper house, staffed with appropriate expertise, could provide the sustained and informed parliamentary scrutiny of military matters that has been absent from Bangladesh's unicameral parliament.

The strengthening of judicial independence, through enhanced tenure security for judges and strengthened institutional independence for the Supreme Court, would enhance the constitutional courts' capacity to exercise genuine and rigorous review of military decisions. A more confident and independent judiciary is less likely to defer excessively to military authority and more likely to hold military institutions to the full requirements of constitutional compliance.

The constitutional provisions on the accountability of security forces, including proposals for independent oversight institutions and effective complaint mechanisms, would create a more comprehensive framework for the civilian accountability of the air force and for the protection of the rights of both service members and civilians in their interactions with the air force.

A7.3 The Constitutional Reform Process and Air Force Leadership: An Institutional Perspective

The constitutional reform process of 2024-2025 presents the leadership of the Bangladesh Air Force with both an opportunity and a responsibility. The opportunity is to contribute the air force's professional expertise to the design of a constitutional and legislative framework that effectively integrates the requirements of military effectiveness with the demands of constitutional democracy. The responsibility is to engage with this process with honesty, transparency, and institutional humility, acknowledging the constitutional deficiencies of the existing framework and embracing the reforms that are necessary to address them.

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Air force leadership's engagement with the constitutional reform process should be guided by several principles. The first principle is constitutional commitment: the air force should publicly affirm its commitment to operating within whatever constitutional framework the Bangladeshi people choose through the democratic process, and should make clear that this commitment is unconditional and not contingent on the specific content of the reforms adopted. The second principle is professional input: the air force should provide its professional assessment of the operational and institutional implications of specific proposed reforms, drawing on its expertise to help the reform process understand the practical consequences of different constitutional choices. The third principle is transparency: the air force should be willing to acknowledge the constitutional deficiencies of the existing system and to support reforms that address those deficiencies, even where those reforms constrain the institutional autonomy of the service.

The historical moment that Bangladesh is living through in the constitutional reform process of 2024-2025 is one of exceptional significance. The opportunity to build a genuinely constitutional military institution, one that derives its authority from democratic legitimacy, exercises its power in accordance with constitutional rights, and is accountable to the people it serves through effective mechanisms of civilian oversight, is an opportunity that may not recur for a generation. The leadership of the Bangladesh Air Force should seize this opportunity with both hands, not from external compulsion but from the deep institutional understanding that a constitutionally legitimate air force is a more effective, more respected, and more durable institution than one whose authority rests on power alone.

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Author's Note:

This Part has drawn on constitutional reform materials current through April 2026, including the ConstitutionNet analyses of the July National Charter of October 2025, the Implementation Order of November 2025, and the constitutional reform timeline. The rapidly evolving constitutional situation in Bangladesh means that specific provisions may have changed by the time of reading, and officers are advised to consult current official sources for the most recent constitutional developments. The philosophical and jurisprudential analysis in this Part draws on classical and contemporary sources in legal and political philosophy, with the aim of providing officers with the theoretical resources necessary for sustained and independent constitutional reflection.

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End of Part Seven

Editorial Note: Part Eight of this handbook will examine the discipline and administrative law of the Bangladesh Air Force in comprehensive detail, including the full disciplinary framework of the Air Force Act, the principles of non-judicial punishment and summary proceedings, the administrative mechanisms for the management of conduct below the threshold of court martial, the relationship between the formal disciplinary system and the informal mechanisms of institutional culture and professional expectation, and the reform requirements that constitutional analysis and comparative experience together identify. Part Eight will bring together the constitutional analysis of Part Seven and the institutional analysis of Parts One through Six in a comprehensive account of the disciplinary law that governs the daily life and conduct of every officer and airman of the Bangladesh Air Force.

This Part is dedicated to the officers and airmen of the Bangladesh Air Force who served with integrity during the constitutional crisis of July and August 2024, who upheld the values of constitutional order in conditions of extreme institutional and political pressure, and who demonstrated through their conduct that the Bangladesh Air Force is an institution capable of genuine constitutional commitment. Their example is an inspiration to all who serve, and their names, though not recorded here, are written in the institutional memory of a service that is finding its way toward a more perfect constitutional future.

This handbook is intended as an educational and scholarly resource. It does not constitute legal advice. Officers seeking guidance on specific legal questions arising in the course of their duties should consult the legally qualified advisers of the Bangladesh Air Force.

PART EIGHT

DISCIPLINE AND ADMINISTRATIVE LAW OF THE BANGLADESH AIR FORCE: COMMANDING OFFICER AUTHORITY, NON-JUDICIAL PROCEEDINGS, SUMMARY PROCESSES, ADMINISTRATIVE ACTIONS, AND THE REFORM IMPERATIVE

PREFATORY NOTE TO PART EIGHT

Every institution that exercises coercive power over human beings owes those persons a framework of law that is proportionate, fair, transparent, and grounded in values that can be publicly defended. Military institutions exercise coercive power more extensively and more intensely than almost any other human organisation, and the framework of law that governs the exercise of that power is therefore of the highest importance. Part Eight of this handbook addresses the detailed architecture of that framework in the Bangladesh Air Force: the system of discipline and administrative law that governs the daily conduct of officers and airmen, the mechanisms through which misconduct is investigated and adjudicated, the administrative tools

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through which performance is managed and careers are shaped, and the deeper jurisprudential and philosophical questions about the nature of military discipline and its relationship to justice that the specific rules and procedures both embody and conceal.

Part Seven established the constitutional framework within which all of this must be understood. Part Eight descends from constitutional principle to operational practice, examining how the philosophy of rights-bearing citizenship in uniform actually plays out in the daily disciplinary life of a real air force. This is not merely a technical exercise in the description of statutory provisions and procedural rules, though it is certainly that as well. It is an inquiry into one of the most practically consequential aspects of military law: the thousands of daily decisions, by commanding officers at every level of the hierarchy, that determine whether individual service members are treated with dignity and fairness, whether the disciplinary system produces genuine justice or merely institutional compliance, and whether the Bangladesh Air Force operates as an institution that is genuinely accountable to the values it publicly affirms.

The recent comparative experience is instructive for this inquiry. In the United States, the most comprehensive military discipline system in the world has been undergoing profound changes. The Air Force JAG Corps's 2025 Military Commander and the Law publication, the revised Army Regulation 27-10 effective January 2025, the expanded authority of the Office of Special Trial Counsel effective December 2023, and the Military Justice Review Panel's December 2024 Comprehensive Review together represent the most sustained reform of military discipline law in any major power in recent decades. The theoretical debates that have driven those reforms, about the proper role of commanding officer discretion, the relationship between discipline and justice, the balance between corrective and punitive approaches to misconduct, and the constitutional dimensions of non-judicial proceedings, are debates to which the Bangladesh Air Force must attend with the same seriousness. The principles that animate those debates apply universally, even though the specific statutory and procedural context of Bangladesh Air Force law is distinct.

This Part is organised in fifteen chapters. It begins with a philosophical and jurisprudential analysis of the concept of military discipline itself, examines the theoretical foundations of commanding officer disciplinary authority, analyses the specific mechanisms of summary and non-judicial proceedings under the Air Force Act, addresses the administrative mechanisms for performance management and career regulation, examines the relationship between the disciplinary system and the broader administrative law framework, engages with the constitutional dimensions of summary proceedings, considers the historical development of disciplinary law in the Bangladesh Air Force, and concludes with a comprehensive assessment of the reform agenda.

CHAPTER EIGHTY-EIGHT: THE PHILOSOPHY AND JURISPRUDENCE OF MILITARY DISCIPLINE

88.1 What Is Military Discipline? Conceptual Analysis and Theoretical Foundations

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Military discipline is one of those concepts so familiar in the vocabulary of armed forces life that its meaning is rarely subjected to serious analytical scrutiny. Every officer of the Bangladesh Air Force has been told, from the earliest days of their training, that discipline is the foundation of effective military service, that without discipline an air force cannot function, and that maintaining discipline is among the most important responsibilities of command. But what exactly is discipline, in the sense that is relevant to military law? What are its philosophical foundations? And what are its proper limits?

The word discipline derives from the Latin disciplina, which in Roman usage referred to instruction, training, and the formation of character through the exercise of authority. It is connected to the Latin discere, to learn, and to discipulus, a pupil or learner. This etymological root is revealing. Discipline, in its original sense, is not primarily about punishment. It is about formation: the development of the habits, instincts, reflexes, and values that make a person capable of effective action in demanding circumstances. Military discipline, in this formative sense, is the process through which individuals are shaped into effective military professionals, capable of operating under conditions of extreme stress, of following orders rapidly and accurately, of maintaining their professional standards when supervision is absent, and of exercising sound independent judgment within the framework of operational plans.

This formative conception of discipline must be distinguished from the narrower conception of discipline as punishment, as the system of penalties and sanctions through which misconduct is deterred and remedied. The Air Force Act's disciplinary provisions, with their elaborate framework of offences, penalties, and procedures, are the legislative expression of this narrower conception. But the broader formative conception is equally important, and it provides the philosophical framework within which the specific punitive rules must be understood. The ultimate purpose of military discipline is not the punishment of wrongdoers but the formation and maintenance of a professional community capable of discharging its constitutional obligations effectively. Punishment is a means to that end, not an end in itself.

The philosophical literature on the nature of discipline is extensive, and several theoretical frameworks deserve careful attention in the military context. Michel Foucault's analysis of discipline, developed in his 1975 work Discipline and Punish, offers a powerful and deeply influential account of how disciplinary systems operate in total institutions, including military organisations. Foucault argues that modern disciplinary systems operate not primarily through dramatic public punishment but through the constant normalising gaze of surveillance, examination, and hierarchical observation. The individual subject of discipline is not simply punished when they deviate from the norm; they are constantly observed, measured, assessed, and compared against a norm from which deviation triggers correction. The effect of this constant normalising gaze is the internalisation of the discipline: the subject of discipline eventually disciplines themselves, because the system of observation and assessment has shaped their habits and self-perception in ways that make self-monitoring automatic.

Foucault's analysis is directly applicable to military institutions, and the Bangladesh Air Force is no exception. The system of officer performance reports, annual assessments, promotion boards, fitness evaluations, and constant peer observation that characterises air force life is a sophisticated disciplinary apparatus in precisely the Foucauldian sense. It does not operate

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primarily through the imposition of formal punishment but through the normalising effects of constant assessment against professional standards. The disciplinary power of this apparatus is enormous, and it operates largely outside the formal legal framework of the Air Force Act. Understanding military discipline requires understanding this broader disciplinary architecture, not merely the specific punitive provisions of the Act.

Emile Durkheim's sociological analysis of punishment, developed in The Division of Labour in Society (1893) and in his essays on punishment and social solidarity, offers a complementary perspective. Durkheim argued that the function of punishment in social systems is primarily expressive and symbolic rather than purely deterrent or retributive. Punishment expresses the community's moral values, affirms the authority of the violated norm, and reintegrates the community by marking the boundary between acceptable and unacceptable behaviour. In the military context, Durkheim's analysis suggests that the formal disciplinary system has a symbolic function that goes beyond the deterrence or rehabilitation of individual offenders. When a commanding officer acts formally against a service member who has violated a standard of conduct, the action expresses the community's values, affirms the authority of the violated norm, and signals to all members of the unit the seriousness with which the institution regards that standard. This expressive function of military discipline is one of the reasons why it matters not only that misconduct is punished but that it is punished in a manner that is visible, proportionate, and consistent.

88.2 The Contractarian Foundation of Military Discipline: Legitimacy and Consent

The commanding officer's authority to discipline personnel under the Air Force Act rests, in the last analysis, on a theory of legitimate authority. Authority is legitimate, in the sense relevant to this analysis, when those subject to it have rational grounds to accept it as authoritative. The commanding officer who imposes punishment on an airman is exercising authority that must be legitimate in this sense. The question of the philosophical foundation of that legitimacy is one of the deepest questions in military jurisprudence.

The contractarian tradition in political philosophy, running from Hobbes through Locke and Rousseau to Rawls and Habermas, provides the most widely influential account of the legitimacy of authority in liberal democratic societies. On the contractarian account, legitimate authority is authority that could be consented to by free and rational persons reasoning from an appropriate standpoint of impartiality. The authority of the commanding officer to discipline personnel is legitimate, on this account, because persons contemplating military service from a standpoint of rational self-interest, aware of the requirements of effective collective military action, would consent to a system of authority in which commanding officers have the power to enforce standards of conduct, to investigate misconduct, and to impose proportionate penalties for violations of those standards. They would consent to this system because they understand that without it, the collective enterprise of military defence on which all members of the community depend for their security cannot be sustained.

This contractarian foundation of commanding officer authority has important implications for the content of that authority and its limits. First, it implies that the authority is purposive rather than absolute: it is justified by reference to the purposes it serves, and exercises of authority that do

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not serve those purposes are not justified. A commanding officer who exercises disciplinary authority for personal reasons, for purposes of institutional self-interest, or to suppress legitimate grievance rather than to maintain operational effectiveness and professional standards, is not exercising legitimate authority. Second, it implies that the authority has limits defined by the rights that free and rational persons would insist on preserving even within a framework of military discipline. Persons consenting to a system of commanding officer authority would insist that it be exercised consistently, that it be proportionate to the offence, that it afford the accused a fair opportunity to present their case, and that it not be used as an instrument of arbitrary or discriminatory punishment. Third, it implies that the authority is conditional on the institution's reciprocal discharge of its obligations to personnel, including obligations of fair treatment, reasonable conditions of service, and protection of the rights of personnel against institutional abuse.

88.3 Discipline and Justice: The Persistent Tension and Its Resolution

The tension between discipline and justice is one of the most enduring themes in military jurisprudence. Discipline, in its narrower punitive sense, demands swift, certain, and consistent enforcement of standards. Justice demands careful, individualised assessment of culpability, proportionate punishment, and robust procedural protection of the accused. These demands can come into conflict, and the history of military discipline is in substantial part the history of that conflict and the various ways in which different systems have attempted to resolve it.

The discipline-first approach to this tension prioritises the institutional requirements of swift and certain punishment over the individual interests of fairness and procedural protection. It argues that excessive procedural protection for the accused undermines the deterrent effect of discipline, creates delay and uncertainty that erode institutional standards, and emboldens misconduct by making its consequences unpredictable. This approach dominated the early history of military discipline and still finds expression in aspects of the summary proceedings provisions of the Air Force Act.

The justice-first approach prioritises the individual rights of the accused over the institutional requirements of swift punishment. It argues that a system that sacrifices procedural fairness to institutional convenience is not merely unjust to individual accused persons but ultimately undermines institutional legitimacy, because personnel who do not trust the fairness of the disciplinary system will not give their full confidence and engagement to the institution. This approach has gained ground in military jurisprudence worldwide over the past several decades, driven by constitutional rights consciousness, by comparative jurisprudential development, and by empirical evidence that fair and transparent disciplinary systems are more effective at maintaining institutional standards than arbitrary and opaque ones.

The most sophisticated contemporary position, reflected in the recent reforms in multiple jurisdictions including the December 2024 Military Justice Review Panel Report in the United States, is neither the discipline-first nor the justice-first approach but an integrated approach that treats discipline and justice as complementary rather than competing values. On this integrated view, a disciplinary system that is genuinely fair to individual accused persons is also a more effective system of institutional discipline, because it commands the confidence of the personnel

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it governs, because it focuses institutional resources on genuine misconduct rather than technical violations and minor matters, and because it models the professional values of integrity, fairness, and accountability that the institution claims to embody. The integrated approach is the approach that the Bangladesh Air Force's disciplinary system should aspire to, and it is the approach from which the analysis of the specific provisions of the Air Force Act and the administrative framework must proceed.

88.4 The Sociological Dimension: Unit Cohesion, Morale, and the Social Function of Discipline

Military discipline, viewed from the perspective of the sociology of organisations, serves social functions that are distinct from its formal legal functions. The formal legal function of discipline is to deter and punish misconduct, to enforce compliance with standards, and to provide the machinery of justice for the resolution of disciplinary disputes. The social function of discipline is to maintain the social fabric of the unit, to express and reinforce the community's values, to manage the tensions and conflicts that inevitably arise in any group of people living and working in close proximity under conditions of stress, and to signal to all members of the community the standards that define membership in the professional community of the air force.

The sociological literature on military units emphasises the importance of cohesion, the degree to which members of a unit trust each other, are committed to the unit's goals, and are willing to make sacrifices for each other, as the primary predictor of military effectiveness. Units with high cohesion perform better in adversity, maintain their effectiveness under stress, and develop the collective competence that distinguishes professional military formations from armed crowds. The relationship between discipline and cohesion is complex and bidirectional. Effective discipline, applied fairly and consistently, can enhance cohesion by establishing clear standards, demonstrating that all members are held to the same account, and removing from the unit those whose conduct is incompatible with the unit's professional integrity. But poorly applied discipline, especially discipline that is perceived as arbitrary, discriminatory, or serving the interests of institutional authority rather than the values of the professional community, can destroy cohesion by undermining trust, generating resentment, and creating a culture of self-protection and blame-avoidance rather than professional responsibility.

The implication for commanding officers of the Bangladesh Air Force is that the exercise of disciplinary authority is not merely a legal and administrative function. It is an act of social leadership with consequences for the cohesion, morale, and effectiveness of the unit that go far beyond the immediate disciplinary outcome. A commanding officer who exercises disciplinary authority with wisdom, with fairness, with consistency, and with genuine concern for the professional development of the personnel under command, is doing far more than administering a legal system. They are shaping the professional culture of the unit, demonstrating by example the values that the institution claims to embody, and building the trust and confidence that are the foundation of genuine military effectiveness.

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CHAPTER EIGHTY-NINE: THE COMMANDING OFFICER'S DISCIPLINARY AUTHORITY: SOURCES, SCOPE, AND CONSTITUTIONAL LIMITS

89.1 The Legal Sources of Commanding Officer Disciplinary Authority in Bangladesh Air Force Law

The commanding officer's disciplinary authority in the Bangladesh Air Force derives from several overlapping legal sources, the interaction of which creates a complex but coherent framework of authority. The primary source is the Air Force Act of 1953, which vests in commanding officers at various levels a range of powers: the power to investigate misconduct, the power to deal summarily with certain categories of offence, the power to refer cases to court martial, the power to detain accused persons pending proceedings, the power to impose certain administrative sanctions, and the power to take various other actions in relation to the discipline and administration of personnel under their command.

The second source of commanding officer authority is the Air Force Regulations, made under Section 185 of the Air Force Act, which elaborate the general powers of the Act into more specific rules governing the day-to-day exercise of command authority. The Air Force Regulations address matters such as the conduct of investigations, the procedures for summary proceedings, the standards of conduct expected of officers and airmen, the management of unit discipline, and the relationship between commanding officers at different levels of the hierarchy. The Regulations, being subordinate legislation, must be consistent with both the Air Force Act and the Constitution, and any provision of the Regulations that is inconsistent with either is void to that extent.

The third source of commanding officer authority is the accumulated body of usages of the service, which the Air Force Act explicitly recognises as part of air force law. These usages, as discussed in Chapter One of this handbook, represent the institutional memory of the air force, the accumulated experience of generations of officers and airmen who have worked out, through practice, the standards and procedures appropriate to the specific professional context of air force service. They include standards of conduct that are not explicitly prescribed in any written instrument, procedures for the conduct of informal disciplinary processes that have evolved through institutional practice, and expectations about the professional demeanour, judgment, and character of officers that are transmitted through training and socialisation rather than formal instruction.

The fourth source of commanding officer authority is the general law, including the Penal Code, the Code of Criminal Procedure, and the constitutional framework analysed in Part Seven. These provisions of general law constrain the exercise of commanding officer authority, both by establishing limits that cannot be exceeded and by providing a framework of legal principle within which the specific provisions of the Air Force Act must be interpreted.

89.2 The Hierarchy of Command and Disciplinary Authority: Understanding Who Has What Powers

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The Air Force Act establishes a hierarchy of disciplinary authority in which the specific powers available to a commanding officer depend on that officer's rank and the level of command they hold. This hierarchy reflects the military principle that the scope of disciplinary authority should be commensurate with the scope of command responsibility: senior officers commanding large formations have broader disciplinary powers than junior officers commanding smaller units, because the former bear greater responsibility for the overall standard of conduct and discipline in their formation and require broader tools to discharge that responsibility.

At the apex of the hierarchy is the authority to convene general courts martial, which is vested in officers of senior rank and high command. The convening of a general court martial is the most severe disciplinary mechanism available under the Air Force Act, reserved for the most serious offences and carrying the heaviest potential penalties. Below this level is the authority to convene district courts martial, available to officers of middle seniority, and at the base of the formal court martial hierarchy is the summary court martial, which can be convened by commanding officers of units.

Beyond the formal court martial hierarchy, the Air Force Act provides for a system of summary proceedings that enables commanding officers to deal with less serious disciplinary matters without the formality of a court martial. These summary proceedings are the workhorse of the disciplinary system, handling the great majority of disciplinary cases that arise in the course of normal air force life. The summary proceedings provisions of the Air Force Act are examined in detail in Chapter Ninety-One of this Part.

The Air Force Act also recognises the authority of commanding officers to take administrative action in relation to personnel under their command, separate from the formal disciplinary mechanisms of court martial and summary proceedings. Administrative action includes the preparation of adverse assessments for personnel files, the recommendation for administrative discharge from service, the imposition of restrictions on privileges, and the initiation of formal warnings about professional performance. These administrative mechanisms are examined in detail in Chapter Ninety-Two of this Part.

89.3 Unlawful Command Influence: The Most Dangerous Corruption of Disciplinary Authority

Of all the pathologies that can afflict a military disciplinary system, unlawful command influence is the most dangerous, the most corrosive of institutional integrity, and the most constitutionally problematic. Unlawful command influence refers to the improper exertion of the authority of the command hierarchy to influence the outcome of disciplinary or judicial proceedings in a manner that undermines the independence and impartiality of those proceedings. It is the military equivalent of judicial corruption, and in a system that is already structurally vulnerable to the influence of hierarchy, it represents a particularly severe threat to the fairness of military justice.

Unlawful command influence can take many forms. In its most obvious form, it involves direct pressure by a senior officer on the members of a court martial to reach a particular verdict or impose a particular sentence. In less obvious but equally corrupting forms, it involves public statements by senior commanders about the guilt of an accused before trial, the selection of court

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martial members known to favour a particular outcome, the manipulation of the composition of investigating bodies to produce predetermined findings, the issuance of directives that establish a predetermined scale of punishment for categories of offence without regard to the individual circumstances of cases, or the creation of a command climate in which adverse disciplinary decisions are expected by those who participate in the process as a condition of their own professional advancement.

The American legal system's treatment of unlawful command influence offers important comparative guidance for the Bangladesh Air Force. In the United States military justice system, unlawful command influence is treated as the most serious defect that can affect the legitimacy of a military justice proceeding. The Court of Appeals for the Armed Forces has held, in a series of decisions extending through 2024 and 2025, that the mere appearance of unlawful command influence is sufficient to undermine the validity of a proceeding, even if the actual outcome was not affected, because the constitutional right to an independent and impartial tribunal is violated by the appearance as well as the reality of command influence. This doctrine of structural integrity, under which the legitimacy of the disciplinary process depends not only on the correctness of its outcomes but on the genuine independence of the process that produced them, is directly applicable to the Bangladesh Air Force context.

The institutional mechanisms for preventing unlawful command influence are as important as the legal rules that prohibit it. These mechanisms include clear statutory and regulatory prohibitions on interference with disciplinary and judicial proceedings, effective training of commanding officers in the boundaries of lawful command authority, confidential reporting mechanisms for those who observe or experience improper command influence, and a genuine institutional culture in which the independence of the disciplinary process is valued as a matter of institutional pride rather than treated as an obstacle to desired outcomes. The JAG system plays a particularly important role in this context, because legally qualified officers advising on disciplinary matters are both professionally equipped and institutionally positioned to identify and resist unlawful command influence.

89.4 The Commanding Officer as Investigator, Prosecutor, and Judge: The Jurisprudential Problem

One of the most fundamental jurisprudential tensions in the Bangladesh Air Force's disciplinary system, as in the disciplinary systems of most armed forces that have inherited the British colonial legal framework, is the fact that the commanding officer simultaneously plays the roles of investigator, prosecutor, and judge in summary proceedings. The commanding officer investigates or directs the investigation of alleged misconduct; makes the decision whether to prefer charges; determines the appropriate level of proceeding, whether summary, summary court martial, or referral to a higher court martial; conducts the summary hearing and determines whether the accused is guilty; and imposes whatever punishment is appropriate. The combination of these functions in a single person is precisely the combination that all modern theories of procedural fairness identify as fundamentally incompatible with fair adjudication.

The constitutional principle of natural justice, audi alteram partem and nemo iudex in causa sua, requires that adjudicators be impartial, free from personal interest in the outcome, and free from

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the prejudicial effect of having been involved in the investigation and prosecution of the matter that comes before them for adjudication. The commanding officer who has personally investigated an allegation, formed a view about the accused's conduct, and preferred charges against the accused on the basis of that view, is not in a position to approach the subsequent summary hearing with the impartiality that natural justice requires. The investigation and the charging decision inevitably create a prior commitment that influences the approach to the hearing.

Academic scholarship has explored this problem extensively in the recent military law literature. A 2024 article published in the Villanova Law Review, examining the jurisprudence of non-judicial punishment under the UCMJ, found that the combination of investigative, prosecutorial, and adjudicative functions in the commanding officer creates structural incentives for confirmation bias, for the pursuit of institutional interests rather than individual justice, and for the excessive use of disciplinary proceedings to manage personnel problems that would be more appropriately addressed through administrative or training mechanisms. The article argued that even where commanding officers act in good faith, the structural features of the system produce systematic distortions in outcomes.

The most comprehensive response to this problem, reflected in recent reforms in the United States and Canada, is the separation of the prosecutorial function from the commanding officer through the establishment of independent military prosecutors who make charging decisions in serious cases without being subject to the command authority of the officers whose personnel are being charged. This structural reform, discussed in Part Seven of this handbook in the context of the Office of Special Trial Counsel in the United States and the comparable reforms in Canada, addresses the deepest jurisprudential problem in the military disciplinary system. For Bangladesh, the reform of the Air Force Act to introduce independent prosecution for serious offences is both a constitutional requirement, for the reasons developed in Part Seven, and a practical necessity for the effectiveness and legitimacy of the disciplinary system.

CHAPTER NINETY: THE DISCIPLINARY OFFENCES UNDER THE AIR FORCE ACT: ANALYSIS AND COMMENTARY

90.1 The Scope and Structure of the Penal Provisions of the Air Force Act

The Air Force Act of 1953 contains an extensive catalogue of offences for which personnel subject to the Act may be disciplined or prosecuted before a court martial. This catalogue, set out in Sections 34 to 74 of the Act, ranges from the most serious offences of mutiny, desertion, and cowardice in the face of the enemy, which carry potentially capital consequences, through a wide range of intermediate offences relating to the performance of duties, the maintenance of discipline, and the observance of lawful orders, down to relatively minor matters of personal conduct and service administration. Understanding the structure and scope of this catalogue of offences is essential for any officer who exercises disciplinary authority, for any accused person seeking to understand the charges they face, and for any scholar seeking to understand the substantive content of Bangladesh Air Force law.

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The offences under the Air Force Act fall into several broad categories. The first and most serious category consists of offences against military loyalty and the authority of the state: mutiny under Section 34, sedition under Section 35, aiding the enemy under Section 36, and related offences. These offences strike at the foundation of the military enterprise itself, at the willingness of personnel to serve the constitutional authority of the state and to maintain the discipline necessary for effective collective military action. They are treated with the utmost seriousness in every military legal system, and the Air Force Act prescribes the most severe penalties for them, including the possibility of the death penalty for the most serious cases.

The second category consists of offences relating to the discharge of specific military duties: desertion under Section 37, absence without leave under Section 38, failure to attend on parade or to report for duty under the relevant provisions, sleeping on watch, and related offences. These offences directly undermine the operational effectiveness of the air force, because an air force whose personnel cannot be relied upon to be present for duty, to stand their watch, and to perform their assigned functions cannot discharge its mission. The penalties for these offences reflect their operational significance, with desertion in particular attracting severe penalties including imprisonment for significant terms.

The third category consists of offences relating to the maintenance of discipline and the authority of the chain of command: striking or threatening a superior officer under the relevant provisions, insubordination, wilful disobedience of lawful orders, and related offences. These offences threaten the hierarchical authority structure that is essential to military effectiveness, and they are treated seriously by the Air Force Act. But the qualifier "lawful" in the offence of disobedience of lawful orders is of the greatest constitutional significance: the Act itself recognises that the duty of obedience extends only to lawful orders, and the unlawful order does not create a duty of obedience but may create a duty of refusal.

The fourth category consists of offences relating to personal conduct and professional standards: drunkenness on duty, conduct unbecoming an officer and a gentleman, and conduct prejudicial to good order and military discipline under Sections 63 and 65 of the Act. These two catch-all provisions are among the most widely used and most jurisprudentially contentious provisions of the Air Force Act. They operate as gap-fillers, capturing forms of misconduct that do not fall within any more specific statutory provision and authorising their punishment on the ground that they are either unbecoming of an officer or prejudicial to discipline. The breadth of these provisions is both their practical utility and their constitutional vulnerability.

90.2 The Offence of Conduct Unbecoming an Officer: Scope, History, and Constitutional Analysis

The offence of conduct unbecoming an officer and a gentleman, which has its origins in the British military law tradition from which Bangladesh Air Force law descends, is one of the most philosophically interesting and constitutionally contested provisions in the Air Force Act. It criminalises conduct that, while not necessarily falling within any specifically defined statutory offence, is considered incompatible with the professional status and moral character expected of a commissioned officer. The offence reflects the understanding that officership is not merely a

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technical qualification but a moral and social role, one that imposes standards of personal conduct extending beyond the purely professional sphere.

The historical origins of this offence trace to the conception of the officer as a gentleman, a person of social standing whose conduct reflects not only on themselves but on the reputation and honour of the service and, by extension, of the sovereign who has granted the commission. This aristocratic conception of the officer corps, rooted in the social structure of eighteenth and nineteenth-century British society, was embedded in the military law tradition that Bangladesh inherited from the colonial period, and it remains embedded in the statutory text of the Air Force Act even though the social assumptions that gave it meaning have been radically transformed.

In the contemporary constitutional context, the conduct unbecoming offence raises serious questions of legal certainty and constitutional fair notice. The principle of legality, nulla poena sine lege, which is embedded in Article 35(1) of the Bangladesh Constitution, requires that no person shall be convicted of an offence except for violation of a law in force at the time of the commission of the act. For the conduct unbecoming offence to be consistent with this requirement, the accused must have had reasonable notice, at the time of their conduct, that the conduct in question violated a legal standard. The vagueness of the conduct unbecoming standard, which is defined by reference to community norms of professional behaviour rather than specific prescribed rules, creates a genuine constitutional problem: the accused may not have known, at the time of the relevant conduct, that it was covered by the offence.

The jurisprudential resolution of this constitutional tension, in Bangladesh as in other jurisdictions that have grappled with it, requires a combination of constitutional interpretation and institutional practice. Constitutional interpretation requires that the conduct unbecoming standard be understood narrowly enough to give it the specificity that the legality principle demands, limited to conduct that would be understood by any reasonable officer as incompatible with the professional standards of commissioned service. Institutional practice requires that the conduct unbecoming offence not be used as a catch-all mechanism for punishing conduct that is merely unpopular with institutional authority or that challenges institutional norms in ways that may be perfectly legitimate. The conduct unbecoming offence is a powerful tool for protecting the honour and reputation of the officer corps against genuinely disgraceful conduct. It becomes constitutionally problematic when it is used as a mechanism for institutional conformism, for the suppression of legitimate dissent, or for the punishment of personal conduct that falls within the sphere of private life that individuals, even military officers, are entitled to manage for themselves.

90.3 Conduct Prejudicial to Good Order and Military Discipline: The Most Widely Used and Least Understood Provision

Section 65 of the Air Force Act, which punishes any act, conduct, disorder, or neglect that is prejudicial to good order and military discipline, is probably the most frequently invoked provision in the entire Act and certainly the one whose scope is most difficult to define with precision. Its sweeping terms capture an almost unlimited range of behaviour, from the trivially technical to the genuinely serious, and its application in practice reflects the judgment of commanding officers rather than any clearly defined legal standard.

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The theoretical challenge of the Section 65 offence is the challenge of specifying what it means for conduct to be prejudicial to good order and military discipline. Good order is a vague concept that encompasses a wide range of institutional values and expectations, from the maintenance of personal appearance standards to the observance of hierarchical protocol to the avoidance of conduct that creates difficulties for the institution's public reputation. Military discipline, as the preceding chapters have argued, is itself a complex concept with multiple dimensions. The combination of these two already indeterminate concepts in a single catch-all offence provision creates an enormous range of potential application that is difficult to reconcile with the constitutional requirements of legal certainty and fair notice.

The jurisprudential approach to the Section 65 offence that best reconciles its legitimate institutional purposes with the constitutional requirements of legality and fair notice is the nexus requirement: the requirement that there be a specific, identifiable nexus between the accused's conduct and an actual or reasonably foreseeable adverse impact on good order or discipline in a specific unit or formation. On this approach, conduct that is personally objectionable but that has no such nexus with actual or foreseeable disciplinary harm does not fall within the offence. The offence is limited to conduct that genuinely and specifically threatens the discipline or good order of a military unit, not to conduct that merely fails to meet general standards of personal propriety.

This nexus requirement is supported by the comparative jurisprudence of military law, including the decisions of the Court of Appeals for the Armed Forces in the United States, which has insisted that the comparable UCMJ provision, Article 134, requires a real connection between the charged conduct and military interests before the provision can be invoked. It is also consistent with the constitutional proportionality analysis developed in Part Seven: a provision that criminalises any conduct that in any way touches on military discipline is not proportionate to the legitimate purpose of maintaining military order, because it extends far beyond what is necessary for that purpose.

90.4 Specific Technical Offences: Safety, Equipment, and Operational Standards

The Air Force Act contains a series of offences specific to the technical character of air force service, including offences relating to the handling and care of aircraft and equipment, the observance of air safety procedures, the maintenance of flying discipline, and related matters. These technically specific provisions are among the most practically important in the Act, because the consequences of their violation are potentially catastrophic in a service that operates complex, powerful, and dangerous aircraft in conditions requiring the highest standards of technical competence and procedural discipline.

A Yak-130 training aircraft crash at Chattogram's Patenga on 9 May 2024, in which Squadron Leader Asim Jawwad died, was attributed to pilot error. The Ministry of Defence's response of sending five officers into forced retirement for unsafe flying practices involving the Yak-130 training aircraft illustrates how the administrative response to aviation safety incidents operates in practice, with administrative separation rather than criminal prosecution being the primary institutional response to flying safety failures. This case also illustrates the interface between the

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technical safety framework, the disciplinary law framework, and the administrative law framework that are all engaged by aviation incidents in the Bangladesh Air Force.

The more serious Chengdu J-7 crash of 21 July 2025, in which a twin-seat FT-7BGI variant crashed into the campus of Milestone School and College in Uttara, Dhaka, killing at least thirty-five people including the pilot and injuring one hundred and seventy-one others, brings into focus the intersection of technical offences under the Air Force Act, administrative accountability for aviation safety systems, and the potential criminal liability of individuals for aviation disasters that cause civilian casualties. The legal framework applicable to such incidents engages the Air Force Act's provisions on the safe handling of aircraft, the relevant aviation safety regulations, the domestic criminal law framework applicable to negligent conduct causing death, and potentially the civil liability framework applicable to compensation of victims.

Aviation safety offences in the Bangladesh Air Force, viewed through the lens of jurisprudential theory, illustrate the relationship between technical regulatory law and traditional criminal law. The traditional criminal law framework requires proof of mens rea, of mental fault in the form of intention or recklessness, as a condition of criminal liability. Aviation safety offences, by contrast, often involve unintentional failures of procedure or technical judgment that are nonetheless treated as disciplinary or criminal offences because of the severity of their potential consequences and the professional obligation of aviation personnel to maintain the highest standards of technical competence. The theoretical justification for imposing disciplinary or criminal liability for unintentional technical failures is the principle of professional responsibility: persons who undertake roles that carry severe risks for others, including the risk of catastrophic aviation accidents, assume a professional responsibility to maintain the standards of competence that those roles require, and failure to maintain those standards constitutes a form of culpable negligence even if it is not deliberate.

CHAPTER NINETY-ONE: SUMMARY PROCEEDINGS UNDER THE AIR FORCE ACT: PROCEDURE, PHILOSOPHY, AND CONSTITUTIONAL DIMENSIONS

91.1 The Nature and Purpose of Summary Proceedings

Summary proceedings are the primary mechanism through which minor and intermediate disciplinary matters are handled in the Bangladesh Air Force on a day-to-day basis. The great majority of disciplinary cases that arise in the course of normal air force life are resolved through summary proceedings rather than court martial. Summary proceedings are designed to be swift, informal, and manageable within the resources and time constraints of an operational unit. They provide the commanding officer with a flexible tool for maintaining unit discipline without the delays, costs, and disruptions associated with the formal court martial process.

The Air Force Act provides for summary proceedings in which the commanding officer hears charges against a person subject to the Act and determines whether the charge is made out and, if so, what punishment is appropriate. The provisions governing summary proceedings are found in Sections 80 to 84 of the Act and in the relevant provisions of the Air Force Regulations. These

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provisions establish the procedural framework of summary proceedings, including the accused's right to know the charge, the opportunity to present their case, the limits on the punishments that can be imposed at summary level, and the right to elect for court martial rather than summary proceedings in certain cases.

The philosophical justification for summary proceedings rests on several foundations. The first is the practical argument: the volume of disciplinary cases that arise in an air force makes it impossible to process all of them through the formal court martial machinery. A system that required a full court martial for every instance of late return from leave, every failure to maintain equipment in the prescribed condition, or every minor infringement of standing orders would be paralysed by the administrative burden of proceedings. Summary proceedings provide a proportionate response to minor misconduct that is adequate for the disciplinary purposes involved without imposing disproportionate costs on the system.

The second justification is the pedagogical argument: summary proceedings, conducted by the commanding officer who is personally acquainted with the accused and with the circumstances of the alleged offence, are better suited than formal court martial proceedings to the formative and corrective functions of military discipline. The commanding officer who knows the accused, who understands the pressures and circumstances that may have contributed to the misconduct, and who has the authority and the institutional responsibility to address those circumstances, is better placed than a distant tribunal to impose a response to misconduct that is genuinely corrective rather than merely punitive.

The third justification is the proportionality argument: for minor offences, the full apparatus of court martial proceedings is disproportionate to the gravity of the misconduct. The humiliation and career damage associated with a formal court martial conviction can be vastly greater than the underlying misconduct warrants, and a system that imposes these consequences for trivial breaches of discipline is both unjust to individual accused persons and institutionally damaging because it deters commanding officers from using the disciplinary system for minor matters, leaving those matters unaddressed.

91.2 The Accused's Rights in Summary Proceedings: Constitutional Minimum Standards

The procedural protections afforded to the accused in summary proceedings are substantially less extensive than those available in court martial proceedings, and this relative informality is constitutionally defensible for the reasons articulated in the preceding section. But it is not constitutionally unlimited. Even summary proceedings must comply with a constitutional minimum standard of procedural fairness that reflects the constitutional principles of natural justice and fundamental rights developed in Part Seven.

The constitutional minimum for summary proceedings, as derived from the constitutional principles analysed in Part Seven and from the comparative jurisprudence of military and administrative law, includes the following elements. First, the accused must be informed of the charge against them, in terms sufficient to enable them to understand what they are alleged to have done and what standard they are alleged to have violated. This is the notice requirement,

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derived from the constitutional principle of legal certainty and from the natural justice principle of audi alteram partem.

Second, the accused must have a genuine opportunity to present their account of the relevant events, to call evidence or witnesses that may support their case, and to challenge the evidence or account presented against them. This is the hearing requirement, also derived from audi alteram partem. The hearing need not be formal, and the procedures of summary proceedings are appropriately simpler than those of court martial proceedings. But the opportunity must be genuine: a process in which the accused's presentation is treated as a formality to be fulfilled rather than a real opportunity to affect the outcome does not satisfy the constitutional requirement.

Third, the commanding officer conducting the summary proceedings must approach them with an open mind, genuinely willing to find the accused not guilty if the evidence does not establish guilt to the appropriate standard. The commanding officer is not required to bring to summary proceedings the same degree of institutional independence that a court martial judge is required to bring to formal proceedings, but they are required to bring genuine impartiality to the specific question of whether the charge against the individual accused is made out. The commanding officer who has predetermined the accused's guilt before the hearing, who treats the proceedings as a mechanism for confirming a decision already made, violates the constitutional principle of fairness that applies even to summary proceedings.

Fourth, the punishment imposed in summary proceedings must be proportionate to the offence. The Air Force Act prescribes maximum punishments for summary proceedings that are substantially less severe than the maximum punishments available at court martial, reflecting the lesser gravity of the offences appropriately handled at summary level. Within the prescribed maxima, the commanding officer must exercise judgment to determine a punishment that is proportionate to the specific offence and the specific circumstances of the individual accused. A punishment that is disproportionately severe, imposed to make an example or to express displeasure rather than to achieve a proportionate disciplinary response, violates the constitutional principle of proportionate punishment.

Fifth, the accused must have an effective right to seek review of the summary proceedings outcome. The Air Force Act provides for review and appeal of summary proceedings outcomes through the chain of command. This right of review must be genuine and effective: an accused who exercises it must have confidence that the reviewing authority will approach the review with open-minded fairness rather than institutional solidarity with the original decision. The development of more independent and accessible review mechanisms for summary proceedings is one of the reform priorities identified in this Part.

91.3 The Right to Elect for Court Martial: Theory and Practice

One of the most important procedural rights available to a person facing summary proceedings under the Air Force Act is the right, in certain circumstances, to demand trial by court martial rather than accept summary proceedings. This right reflects the constitutional principle that persons facing serious consequences have the right to a more formal and procedurally robust

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process than summary proceedings provide. It also reflects a pragmatic recognition that commanding officers are not perfectly positioned to adjudicate every kind of disciplinary matter, and that some cases require the more formal machinery of court martial for their just resolution.

The right to elect for court martial is, however, a double-edged sword. Court martial proceedings carry the possibility of more severe punishment than summary proceedings, because the court martial has access to a wider range of punitive options. The accused who demands court martial in preference to summary proceedings is gambling that the formal proceedings will vindicate them, at the cost of accepting the risk of more severe punishment if they do not. This asymmetry of risk between summary proceedings and court martial has been the subject of extensive scholarly criticism in the military law literature, and it was specifically addressed in the December 2024 Military Justice Review Panel Report, which identified the chilling effect of this risk asymmetry on the effective exercise of the right to demand court martial as a significant deficiency of the current system.

The jurisprudential analysis of the right to elect for court martial requires engagement with the deeper question of the nature of the right itself. Is the right to elect for court martial a genuine procedural right that serves the interests of justice, or is it a nominal right that is effectively unavailable to most accused persons because of the risk asymmetry? If the latter, then the formal provision of the right in the Air Force Act may not satisfy the constitutional requirement of genuine procedural protection for the accused. The constitutional requirement is not merely that the right be provided on paper but that it be genuinely available in practice, meaning that the accused who exercises it does not face consequences that are so much more severe than those available in summary proceedings that the rational choice is always to accept summary proceedings regardless of the facts of the case.

91.4 The Treatment of Minor Offences and the Pedagogy of Correction

The most significant practical challenge in the administration of summary proceedings is the challenge of responding appropriately to the range of minor disciplinary matters that make up the bulk of the disciplinary caseload in any air force unit. These matters range from the trivially technical, such as the wearing of an improperly pressed uniform, through administrative failures such as late submission of required documentation, to more substantive lapses such as use of alcohol contrary to standing orders or minor breaches of operational security procedures. The appropriate response to each of these matters is different, and the commanding officer's challenge is to calibrate the response in a way that achieves the formative and corrective purposes of military discipline without imposing disproportionate consequences.

The primary tools available to the commanding officer for minor disciplinary matters are not formal disciplinary proceedings at all but non-punitive corrective measures: counselling, extra training, verbal admonishment, letters of instruction, and additional supervision. These non-punitive measures, which are the primary tools for routine disciplinary management in well-functioning military units, should always be considered before formal disciplinary proceedings are initiated for minor matters. The initiation of formal proceedings for matters that could be adequately addressed through non-punitive corrective measures is both wasteful of institutional resources and potentially disproportionate to the gravity of the infringement.

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The distinction between punitive and non-punitive disciplinary measures is of constitutional significance. Non-punitive measures do not trigger the procedural rights associated with punishment, because they are not punishment in the constitutional sense. They are management responses to performance or conduct deficiencies, not sanctions for legal violations. But the line between non-punitive corrective measures and punitive disciplinary action is not always clear in practice, and commanding officers must be alert to the risk that measures nominally characterised as non-punitive may in substance constitute punishment, triggering the constitutional requirements of procedural fairness.

The 2025 Air Force Military Commander and the Law publication from the United States Air Force, drawing on the experience of decades of military discipline administration, identifies counselling, admonishment, and reprimand as the primary administrative instruments for behavioural correction below the threshold of formal disciplinary proceedings. It distinguishes between these instruments on the basis of their severity and the formality of the process required: counselling is the least formal and least severe, a recorded conversation about a performance or conduct issue; admonishment is a more formal expression of concern about specific conduct; and reprimand is the most formal, a written communication that becomes part of the personnel record and has consequences for future promotions and assignments. This gradation of administrative corrective measures, from the informal to the formal, provides a model for the Bangladesh Air Force's own framework of pre-disciplinary management tools.

CHAPTER NINETY-TWO: ADMINISTRATIVE LAW DIMENSIONS OF AIR FORCE SERVICE: CAREER MANAGEMENT, SEPARATION, AND ADMINISTRATIVE SANCTIONS

92.1 The Administrative Law Framework of Military Service

The disciplinary law of the Air Force Act operates within a broader administrative law framework that governs the employment relationship between the state and its military servants. This administrative law framework includes the rules governing enrolment and attestation, the conditions of service including pay and allowances, the mechanisms for promotion and career development, the administrative procedures for transfer and posting, the framework for leave and welfare entitlements, and the mechanisms for separation from service, including voluntary retirement, administrative discharge, and compulsory retirement.

The administrative law framework is in many respects more significant for the day-to-day experience of air force service than the formal disciplinary law of the Act. Most air force personnel will never be the subject of court martial proceedings, and relatively few will face formal summary proceedings. But virtually all will be affected by the administrative mechanisms of performance assessment, promotion board proceedings, and career management that determine the trajectory of their service career. The fairness, transparency, and lawfulness of these administrative mechanisms is therefore a matter of the greatest practical importance for service members, and their constitutional dimensions, as analysed in Part Seven, are directly engaged by the decisions they produce.

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The administrative law of military service in Bangladesh is governed by a combination of provisions in the Air Force Act, the Air Force Regulations, Service Instructions, and Standing Orders, supplemented by the broader administrative law framework derived from the Constitution and the general principles of natural justice. The constitutional requirements of equal treatment, procedural fairness, non-arbitrariness, and effective remedy, as analysed in Part Seven, apply to the full range of administrative decisions affecting service members, from routine posting decisions to career-terminating separation from service.

92.2 Performance Assessment and the Annual Confidential Report

The Annual Confidential Report (ACR), known in various forms across different services and jurisdictions as the officer performance report, the annual assessment, or the confidential report, is the primary instrument through which the performance of officers and airmen of the Bangladesh Air Force is systematically assessed, recorded, and used as a basis for promotion, posting, and career management decisions. The ACR is an instrument of extraordinary practical importance: a series of positive ACRs is a prerequisite for promotion, while a single adverse ACR can derail or destroy an otherwise promising career. Understanding the legal framework of the ACR system, including its constitutional dimensions, is essential for every officer of the air force.

The ACR system in the Bangladesh Air Force operates within the general framework of confidential reporting systems that have their origins in the British colonial civil and military service tradition. The reporting officer observes the performance and conduct of the officer being reported on over a specified period, and at the end of the period prepares a confidential report evaluating that performance and conduct against specified criteria. The report is reviewed by a countersigning officer, who endorses or modifies the reporting officer's assessment, and the completed report is forwarded to the air force headquarters where it becomes part of the officer's permanent service record.

The legal and constitutional issues raised by the ACR system include several that deserve specific attention. The first is the issue of confidentiality versus fairness: the system's designation of the report as confidential means that the officer being reported on has traditionally not had access to the full content of the report prepared about them, a feature that sits uneasily with the constitutional principle of natural justice. If the ACR contains adverse assessments of an officer's performance or character that will influence career decisions, the officer has a legitimate interest in knowing what those assessments say and in having an opportunity to respond to them. The confidentiality of the ACR has been eroded in some jurisdictions through reform, with officers being given access to their ACR and the opportunity to make representations in response to adverse assessments. This reform direction is consistent with constitutional principle and should be adopted in the Bangladesh Air Force.

The second issue is the potential for ACR assessments to be influenced by improper considerations, including personal animosity, discriminatory attitudes, or command climate pressure to assess officers in a particular way. The constitutional guarantee of equal treatment in public employment requires that ACR assessments be based on genuine professional assessment of the officer's performance and conduct, not on personal factors unrelated to professional merit.

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The administrative law principle of non-arbitrariness requires that assessments be rational, based on relevant considerations, and not infected by irrelevant personal factors. Where an officer believes that their ACR has been influenced by improper considerations, the constitutional remedy of judicial review is available, but the practical barriers to exercising this remedy, including the institutional culture of accepting superior assessments without challenge and the potential career consequences of challenging a superior officer's assessment, are significant.

92.3 The Adverse Report and the Right to Be Heard

An adverse report in an officer's ACR, one that records significant performance deficiencies or conduct concerns, has consequences that extend far beyond the immediate assessment period. It affects the officer's eligibility for promotion, their prospects for prestigious postings, and their long-term career trajectory. In extreme cases, a series of adverse reports can lead to the compulsory retirement or administrative discharge of the officer from the service. Given these potentially career-terminating consequences, the constitutional requirements of procedural fairness are engaged with considerable force.

The constitutional minimum for adverse ACR assessments, derived from the natural justice principles of audi alteram partem and nemo iudex in causa sua analysed in Part Seven, requires that the officer be informed of the adverse assessment and the grounds for it, and that they be given a genuine opportunity to respond before the assessment is finalised. This does not require a formal hearing comparable to a court martial proceeding. It requires that the officer have access to the adverse assessment, understand the specific concerns it records, and have an opportunity to present their account of the relevant facts, to identify any errors or misunderstandings in the adverse assessment, and to provide context that may be relevant to a fair evaluation of the concerns raised.

The implementation of this constitutional minimum in the Bangladesh Air Force requires both regulatory reform and cultural change. The regulatory framework must clearly require that adverse assessments be communicated to the officer being assessed, that a specified period be provided for the officer to make representations, and that those representations be genuinely considered by the countersigning officer before the assessment is finalised. The cultural change required is a shift in the institutional norm from the assumption that adverse assessments are a private matter between the reporting officer and the hierarchy, to the recognition that the officer being assessed has a legitimate interest in the content of assessments that will determine the trajectory of their career and a constitutional right to a fair process in the preparation and review of those assessments.

92.4 Compulsory Retirement and Administrative Discharge: Natural Justice Requirements

The compulsory retirement or administrative discharge of an officer from the Bangladesh Air Force is one of the most serious administrative actions that can be taken against a service member. It results in the permanent loss of the officer's military career, the loss of the salary, status, and prospects that the career entailed, and frequently the loss of pension entitlements and other post-service benefits that the officer had accumulated through years of service. Given these

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consequences, the constitutional requirements of procedural fairness are engaged in the most stringent way.

The constitutional minimum for compulsory retirement and administrative discharge proceedings requires, at a minimum: clear notice to the officer of the grounds on which the action is proposed; adequate time for the officer to prepare a response; a genuine hearing at which the officer can present their case, call evidence, and respond to the case against them; a decision by an authority that has genuinely considered the officer's representations and is not predisposed to a particular outcome; and written reasons for the decision adequate to enable the officer to understand why the decision was made and to seek judicial review if appropriate.

The High Court Division's jurisdiction under Article 102 of the Constitution, as analysed in Part Seven, extends to judicial review of compulsory retirement and administrative discharge decisions. An officer who has been compulsorily retired or discharged through a process that did not comply with constitutional requirements of procedural fairness has a remedy in the constitutional courts, and the courts of Bangladesh have in a number of cases granted relief to officers whose service was terminated through procedurally unfair processes.

The reform of the Bangladesh Air Force's administrative discharge procedures to ensure full compliance with constitutional requirements is both a legal obligation and a practical institutional interest. A service that treats its personnel fairly and transparently in the administration of their careers, and that provides effective remedies when that standard is not met, is a service that commands the confidence and commitment of its personnel. A service that exercises the power to terminate careers arbitrarily, without adequate process, creates a culture of insecurity and institutional mistrust that undermines the very professionalism and commitment that effective air force service requires.

92.5 Forfeiture of Service, Reduced Pension, and Related Sanctions

The Air Force Act and the associated service regulations provide for a range of financial and career-related sanctions that can be imposed as a consequence of disciplinary proceedings or administrative action, including forfeiture of service for certain periods, reduced pension entitlements, forfeiture of pay and allowances, and related financial consequences. These sanctions, which operate through the administrative and financial management systems of the service rather than through the formal criminal justice framework, are nonetheless of considerable severity and engage the constitutional rights of the personnel affected.

The constitutional principle of proportionality requires that financial and career-related sanctions be proportionate to the gravity of the conduct that gave rise to them. An officer who has committed a relatively minor disciplinary offence should not, as a consequence, suffer the forfeiture of pension entitlements accumulated through decades of service that bear no relationship to the specific offence. The design of the sanctions framework must ensure that the administrative consequences of disciplinary action are calibrated to the gravity of the conduct, not to the administrative convenience of the system or to the maximum available penalty under the Act.

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The relationship between disciplinary proceedings and administrative financial sanctions also raises constitutional questions about double jeopardy. If an officer is convicted of an offence by court martial and sentenced to imprisonment, the simultaneous imposition of forfeiture of pension and related financial sanctions through administrative mechanisms may, in some circumstances, constitute double punishment for the same offence, triggering the protection against double jeopardy under Article 35(2) of the Constitution. The development of a coherent framework that clarifies the relationship between disciplinary sanctions and administrative financial consequences, and that ensures that the overall burden imposed on the officer is proportionate to the conduct, is an important component of the reform agenda for Bangladesh Air Force administrative law.

CHAPTER NINETY-THREE: THE INVESTIGATION OF MISCONDUCT: CONSTITUTIONAL STANDARDS FOR MILITARY INQUIRIES

93.1 The Framework of Military Investigations

The investigation of alleged misconduct in the Bangladesh Air Force is governed by a framework that includes provisions in the Air Force Act, the Air Force Regulations, and the Standing Orders of individual units and formations. This framework provides for several distinct types of investigation, ranging from informal preliminary inquiries conducted by the immediate commanding officer through more formal summary of evidence proceedings to comprehensive Court of Inquiry processes used for major incidents and serious allegations.

Understanding the investigative framework is essential both for commanding officers who must initiate and manage investigations and for accused persons who must understand the process through which the case against them is being built. The constitutional rights of persons subject to investigation, including the right to silence under Article 35(4) of the Constitution and the right to legal advice, are most critically engaged during the investigative phase, before charges are formally preferred, because it is during this phase that the evidence that may later be used against the accused is gathered and the decision about whether to bring formal proceedings is made.

The Court of Inquiry is the most significant formal investigation mechanism available to the Bangladesh Air Force. It is a body constituted by a senior officer for the purpose of investigating a specific incident, allegation, or matter of institutional concern. The Court of Inquiry has wide powers to call witnesses, examine documents, inspect equipment and facilities, and gather evidence relevant to the matter under investigation. Its findings and recommendations, though not binding in the way that a court judgment is binding, are typically of great influence in the subsequent exercise of disciplinary authority and in the development of institutional policies in response to the matters investigated.

The constitutional issues arising from Court of Inquiry proceedings include several of significance. The first is the question of the right to legal representation for persons whose conduct is under scrutiny by the Court of Inquiry. The Court of Inquiry is not a criminal trial, and the formal rules of criminal procedure applicable to courts martial do not necessarily apply to it.

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But if a person's conduct is being investigated in circumstances where adverse findings may lead to formal disciplinary action against them, the constitutional principle of fairness requires that they have access to legal advice in navigating the investigation. The absence of a clear statutory right to legal representation before Courts of Inquiry is a gap in the constitutional protections of the Air Force Act.

The second constitutional issue is the admissibility in subsequent disciplinary proceedings of evidence gathered in the Court of Inquiry process. If a person has been required to give evidence to a Court of Inquiry under conditions where they did not know that their evidence might later be used against them in disciplinary proceedings, the use of that evidence in subsequent proceedings may raise issues of self-incrimination under Article 35(4) of the Constitution. The constitutional principle that no person shall be compelled to be a witness against themselves applies to the coercive gathering of evidence in military investigations no less than in civilian criminal investigations.

93.2 The Preliminary Inquiry and the Commanding Officer's Investigation

Below the level of the formal Court of Inquiry, the Air Force Act and the regulations contemplate a range of informal and preliminary inquiry mechanisms through which commanding officers investigate alleged misconduct before deciding whether to prefer formal charges. The preliminary inquiry may involve questioning the accused, interviewing witnesses, examining relevant documents and records, and inspecting physical evidence. These preliminary investigative activities are essential for the commanding officer to make an informed decision about whether formal charges are warranted and, if so, what charges should be preferred and at what level of proceedings.

The constitutional dimensions of the preliminary investigation are particularly sensitive because the informal and ad hoc character of the preliminary inquiry creates significant risks that constitutional rights will be inadvertently or deliberately compromised. The accused who is questioned by their commanding officer in the course of a preliminary inquiry may not understand that they have a right to decline to answer questions that may incriminate them, may feel institutional pressure to cooperate, and may not have access to legal advice that would enable them to exercise their rights effectively. The constitutional protection against self-incrimination under Article 35(4) applies to preliminary investigations, and the commanding officer who conducts them is constitutionally obliged to inform the accused of their rights before proceeding with questioning.

The rule against self-incrimination in the military context has been the subject of significant comparative jurisprudential development. In the United States, the military equivalent of the Miranda warning, required under Article 31 of the UCMJ before any questioning of a person suspected of an offence under military law, has been part of the military justice framework since 1950. The comparable protection under the Bangladesh Air Force Act and regulations is less clearly developed, and the development of a clear statutory warning requirement for accused persons being questioned in military investigations is an important constitutional reform requirement.

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93.3 Aviation Accident Investigation: The Tension Between Safety and Accountability

Aviation accident investigation in the Bangladesh Air Force illustrates with particular clarity the tension between two distinct institutional purposes that formal investigations may serve: the purpose of identifying the causal factors in an accident in order to prevent future accidents, and the purpose of identifying individual responsibility for misconduct in order to impose appropriate disciplinary sanctions. These two purposes can come into sharp conflict, because the most effective accident investigation is one in which all participants are completely candid about the sequence of events, their individual actions, and the institutional factors that contributed to the accident, while the most effective disciplinary investigation is one that ensures that individual responsibility is clearly established and appropriately addressed.

The constitutional dimension of this tension is direct. If an officer involved in an aviation accident is required to provide a full account of their actions to an accident investigation board under conditions of institutional obligation to cooperate, and if that account is subsequently used as evidence against them in disciplinary or criminal proceedings, the constitutional protection against self-incrimination has potentially been violated. The officer may effectively have been compelled to be a witness against themselves through the institutional obligation to cooperate with accident investigation.

Many aviation safety jurisdictions have addressed this problem by establishing a clear institutional separation between safety investigations and disciplinary investigations, with statutory protections ensuring that evidence given to safety investigations cannot be used in subsequent disciplinary or criminal proceedings. This separation encourages full candour in safety investigations, which is essential for accident prevention, while preserving the integrity of the disciplinary process for cases involving genuine misconduct rather than mere technical error.

The Bangladesh Air Force's accident investigation framework does not currently provide the level of clarity on this point that institutional effectiveness and constitutional principle both require. The development of a statutory framework that clearly separates the safety investigation and disciplinary investigation functions, and that provides appropriate protections for participants in safety investigations, is an important reform requirement that the comparison with international aviation safety practice makes particularly urgent.

CHAPTER NINETY-FOUR: THE JUDICIAL OVERSIGHT OF SUMMARY AND ADMINISTRATIVE PROCEEDINGS

94.1 Judicial Review of Summary Proceedings: The Scope of Constitutional Control

Part Seven of this handbook established the general principle that the High Court Division of the Supreme Court of Bangladesh has constitutional jurisdiction to review exercises of power under the Air Force Act for constitutional compliance. This jurisdiction extends to summary proceedings and to administrative actions affecting service members. The question addressed in

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this chapter is the specific application of judicial review principles to the summary and administrative proceedings examined in preceding chapters of this Part.

The scope of judicial review of summary proceedings is determined by the nature of the decision being reviewed and by the constitutional principles applicable to it. Where the allegation is that the summary proceedings violated the accused's fundamental rights under Part III of the Constitution, the High Court Division's jurisdiction under Article 102(2) is directly engaged, and the constitutional remedy is available as of right. Where the allegation is that the summary proceedings were conducted without lawful authority, exceeded the powers conferred by the Air Force Act, or failed to comply with the procedural requirements prescribed by law, the jurisdiction under Article 102(1) is available.

The practical exercise of this judicial review jurisdiction in relation to air force summary proceedings has been constrained by several factors. The doctrine of institutional deference, the tendency of courts to defer to military disciplinary authorities in matters within their professional competence, has been particularly influential in the military summary proceedings context. The courts have been reluctant to substitute their judgment for that of the commanding officer in matters of professional disciplinary assessment, and this reluctance is defensible where the review concerns the commanding officer's evaluation of professional military conduct. But judicial deference to the commanding officer's assessment of the facts of a specific alleged offence, as opposed to the professional characterisation of that offence, is harder to justify when the constitutional rights of the accused are in issue.

The administrative law principle of proportionality of punishment, which requires that sanctions imposed on individuals be proportionate to the gravity of their conduct, is one that courts in Bangladesh and other jurisdictions have been willing to apply to summary proceedings outcomes. A punishment that is manifestly disproportionate to the offence is an abuse of the commanding officer's discretion and provides a ground for judicial review. The development of more specific jurisprudential guidance on proportionality in the summary proceedings context, through the development of a body of review decisions by the constitutional courts, is an important institutional need that would benefit from greater access by service members to constitutional remedies.

94.2 The Role of the Judge Advocate General in Ensuring Procedural Regularity

The Judge Advocate General of the Bangladesh Air Force plays a critical role in the oversight of summary and administrative proceedings, through the functions of legal advice, review, and supervision that the office discharges. The JAG's office reviews the records of summary proceedings for legal sufficiency, advises commanding officers on the legal requirements applicable to specific disciplinary situations, provides legal training to officers responsible for disciplinary functions, and ensures that the standard of legal compliance in the administration of military discipline meets the requirements of the Air Force Act and the Constitution.

The effective discharge of these functions requires that the JAG's office have genuine independence from the command hierarchy in its legal assessments, that its advice be sought before formal proceedings are initiated in cases of legal complexity or constitutional sensitivity,

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and that its recommendations for the correction of procedural deficiencies be genuinely followed rather than treated as optional guidance. The structural independence of the JAG from the operational chain of command, while it operates within the broader institutional framework of the air force, is essential to its capacity to provide the kind of impartial, constitutionally rigorous legal oversight that a professional military justice system requires.

The model of the JAG's oversight function that best serves the constitutional requirements of Bangladesh Air Force law is not a purely reactive one, in which the JAG reviews proceedings after the fact to identify deficiencies, but a proactive one, in which the JAG's office is involved at key decision points in the disciplinary process to ensure that constitutional requirements are met from the outset. Pre-trial legal advice on the sufficiency of the evidence and the appropriateness of the charges, involvement in the design and conduct of major investigations, and proactive guidance to commanding officers on the constitutional dimensions of specific disciplinary situations are all components of a proactive JAG oversight model that would significantly improve the constitutional quality of Bangladesh Air Force disciplinary proceedings.

CHAPTER NINETY-FIVE: THE HISTORY OF MILITARY DISCIPLINE IN BANGLADESH: FROM COLONIAL INHERITANCE TO CONTEMPORARY PRACTICE

95.1 Discipline in the Liberation War Context: The Foundational Paradox

Any serious historical account of military discipline in Bangladesh must begin with the foundational paradox of the liberation war: the Bangladesh Air Force was born in an act of military disobedience. The Bengali pilots and air force personnel who deserted the Pakistan Air Force to join the liberation movement in 1971 were, from the perspective of the Pakistan Air Force's disciplinary framework, guilty of the most serious military offences: desertion, abandonment of post, and joining the enemy. From the perspective of the Bangladesh that they were helping to bring into existence, they were the founding heroes of the national air force.

This foundational paradox has profound implications for the institutional culture of discipline in the Bangladesh Air Force. An institution founded by men who chose conscience over obedience, who refused to obey the orders of a military authority engaged in what would later be characterised as genocide, carries in its institutional memory a living proof that military obedience has limits, that there are orders that must be refused, and that the ultimate obligation of a military officer is not to any particular authority structure but to the constitutional order and the fundamental moral law that the constitution expresses.

The philosophical implications of this founding history for the contemporary doctrine of obedience in the Bangladesh Air Force are direct and significant. The proposition that an officer is obliged to obey any order that is formally issued by a person with the relevant authority, regardless of its moral content, is not merely philosophically indefensible in the abstract. It is historically false in the specific institutional context of the Bangladesh Air Force, whose founders demonstrated by their actions that obedience to unlawful and immoral orders is not a

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military virtue but a moral failure. This institutional memory should be actively cultivated in the training and professional development of air force officers, not as a licence for insubordination, but as a reminder that the duty of obedience is a duty to lawful authority within a constitutional framework, not a duty to naked power.

95.2 The Post-Liberation Period: Building a Disciplinary Framework from Scratch

The period immediately following the liberation of Bangladesh in December 1971 and the establishment of the independent Bangladesh Air Force presented an extraordinary challenge: the task of building a military disciplinary framework from scratch, in circumstances of institutional chaos, with limited human resources, without an established legal infrastructure, and in the context of a newly independent state still in the process of defining its own constitutional identity.

The practical choice made in this period was to adopt the Air Force Act of 1953, as it had existed in Pakistan, as the foundational legislative instrument of Bangladesh Air Force law, with modifications to terminology and certain provisions to reflect the new national context. This choice was pragmatic and understandable: the alternative, drafting entirely new military legislation from first principles in the midst of post-liberation state-building, would have been enormously demanding and potentially destabilising. But it meant that the Bangladesh Air Force inherited, as the foundation of its disciplinary law, a legislative instrument that had been designed for a different state in a different political context and that embodied legal assumptions about the relationship between military authority and individual rights that were not easily reconciled with the constitutional values of the newly independent Bangladesh.

The subsequent decades of Bangladesh Air Force history have seen the accumulation of an institutional disciplinary practice that reflects both the strengths and the limitations of this inherited framework. The strengths include the relative legal sophistication of the Air Force Act as a product of decades of British military law development, the existence of a trained legal cadre in the form of the JAG system, and the accumulating institutional experience of the air force in administering the disciplinary framework in a wide variety of contexts. The limitations include the gaps and anachronisms in the legislative framework that have been identified throughout this handbook, the constitutional deficiencies that Part Seven analysed in detail, and the cultural dimensions of institutional discipline that sometimes reflect the hierarchical assumptions of the colonial inheritance rather than the constitutional values of the independent Bangladesh.

95.3 Periods of Military Rule and Their Effect on Disciplinary Culture

The periods of military governance that punctuated Bangladesh's post-liberation history, and the roles that Bangladesh Air Force personnel played during those periods, inevitably left their mark on the institutional culture of discipline in the service. During periods of military government, the air force was deployed in functions extending far beyond its normal peacetime role, including the enforcement of order, the support of civil administration, and the provision of institutional authority to a governmental structure in which military officers occupied positions normally filled by civilian administrators.

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These extended roles had complex effects on the culture of military discipline. On one hand, they expanded the scope of the disciplinary framework, requiring the extension of military authority into civilian spheres for which the military's disciplinary and legal framework was not designed. On the other hand, they created institutional habits of authority and an institutional confidence in the value of military order that was not always well calibrated to the requirements of constitutional democracy. The institutional culture that emerges from periods in which the military has been the primary source of social order is one that tends toward confidence in hierarchical authority, toward intolerance of dissent and challenge, and toward an equation of discipline with uniformity and compliance that can be healthy within the operational military context but becomes problematic when it informs the approach to civil society more broadly.

The constitutional reform process of 2024-2025, and the broader process of institutional democratisation that it represents, creates an opportunity to address these cultural inheritances directly. The commitment of the Bangladesh Air Force's leadership to the principle of constitutional democracy, to the principle of civilian control, and to the principle of service as an institution dedicated to the values of the constitution rather than to its own institutional interests, requires a corresponding commitment to the development of an institutional culture of discipline that embodies constitutional values: that is fair to individuals, that respects the constitutional rights of service members, that maintains high standards of professional conduct while doing so in a way that is transparent, proportionate, and grounded in the rule of law.

CHAPTER NINETY-SIX: THEORIES OF PUNISHMENT AND THEIR APPLICATION TO MILITARY DISCIPLINE

96.1 Retributivism and Military Punishment

The philosophy of punishment has produced several major theoretical frameworks that illuminate the purposes and limits of military disciplinary sanctions. The oldest and most intuitive theory of punishment is retributivism: the view that punishment is justified because wrongdoers deserve to suffer for their wrongs, that the imposition of proportionate suffering on those who have violated moral and legal norms is intrinsically just, independently of any consequentialist benefits that the punishment may produce.

In the military context, retributivism has a powerful appeal. The seriousness of military misconduct, especially misconduct that endangers the lives of fellow service members, compromises operational missions, or betrays the trust of the institution and the public, seems to call for a response that is proportionate to the gravity of the wrong, a response that affirms the moral seriousness of the violated standard and expresses the community's condemnation of the conduct. The retributive framework provides the philosophical foundation for the principle that serious military misconduct should be seriously punished, and it supports the constitutional requirement of proportionality of punishment by insisting that the severity of punishment must be calibrated to the gravity of the wrong.

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But retributivism, taken as the exclusive theory of military punishment, faces significant limitations. It does not provide a clear criterion for the precise calibration of punishment: how severe should the punishment for a specific offence be, measured on the retributive scale of desert? It does not explain the distinctive features of the military disciplinary system, such as the preference for non-judicial proceedings for minor offences and the emphasis on corrective rather than punitive responses to performance failures. And it does not provide a framework for thinking about the institutional purposes of the military disciplinary system, which go beyond the punishment of individual wrongdoers to encompass the maintenance of unit effectiveness, the formation of professional character, and the cultivation of institutional integrity.

96.2 Deterrence Theory and the Limits of Its Application to Military Discipline

The utilitarian theory of punishment, most influentially developed by Jeremy Bentham in the late eighteenth century, justifies punishment by reference to its social consequences: punishment is justified when and to the extent that it produces a net benefit to society by deterring future offences, incapacitating dangerous individuals, or rehabilitating offenders. Applied to military discipline, the deterrence rationale holds that the threat of punishment for military misconduct deters personnel from committing offences, maintains the standards of conduct necessary for military effectiveness, and contributes to the institutional culture of discipline that is the foundation of military professional integrity.

The deterrence theory has considerable intuitive plausibility in the military context. The military disciplinary system is explicitly designed to deter misconduct by making its consequences certain, swift, and appropriately severe. The emphasis in military discipline on the uniform and consistent enforcement of standards, so that all personnel understand that violations will be detected and punished, reflects the deterrence logic: uncertain enforcement undermines deterrent effect. The calibration of punishment scales to the seriousness of offences, with the most severe punishments reserved for the most serious offences, also reflects the deterrence framework.

But deterrence theory, in its pure form, faces empirical and philosophical limitations that are directly relevant to military discipline. Empirically, the research on deterrence suggests that the certainty of punishment matters more than its severity for the deterrent effect, that most offences are committed in circumstances where the offender does not engage in careful cost-benefit calculation, and that the marginal deterrent effect of increasing punishment severity is often small. These empirical findings support the constitutional principle of proportionality of punishment, because they suggest that very severe punishments do not provide significantly greater deterrence than moderately severe ones and that their additional severity is therefore not justified by deterrence considerations.

Philosophically, deterrence theory treats the punishment of individuals primarily as a means to the social goal of crime prevention, using the individual as an instrument for the production of social benefits. This instrumentalisation of the individual, in which the punishment of a specific person serves primarily to deter others rather than to give the offender their just desert, sits uneasily with the Kantian moral principle that persons must be treated as ends in themselves rather than merely as means to the ends of others. The Kantian critique of pure deterrence theory supports the constitutional requirement of proportionality of punishment: a punishment that is

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disproportionately severe solely because disproportionate severity is believed to maximise deterrence violates the dignity of the individual by using them as an instrument of social policy rather than responding to them as a responsible moral agent.

96.3 Rehabilitation and Restoration in Military Discipline

The rehabilitative theory of punishment holds that the primary purpose of punishment is the reform and rehabilitation of offenders, the transformation of persons who have committed misconduct into persons who will not do so in future. In the military context, this theory supports the emphasis on corrective and formative responses to misconduct rather than purely punitive ones, the preference for counselling, extra training, and formal warning over formal disciplinary proceedings for minor matters, and the recognition that the long-term interests of both the institution and the individual are better served by reforms that help the offender understand and correct their conduct than by punishments that damage their career without addressing the underlying causes of the misconduct.

The rehabilitative approach to military discipline is most clearly expressed in the provisions for non-punitive corrective measures discussed in Chapter Ninety-One of this Part. Extra training, counselling, restricted privileges, and formal warnings are all instruments of rehabilitation in the military context: they signal to the individual that their conduct was unacceptable, they identify the specific deficiency that needs to be corrected, and they provide the support and direction needed to achieve that correction. These corrective measures do not involve the formal imposition of punishment and do not carry the career consequences associated with formal disciplinary proceedings. Their effectiveness depends on the genuine commitment of the commanding officer to the rehabilitation of the individual rather than merely to institutional compliance with disciplinary norms.

Restorative justice theory, which has gained considerable currency in civilian criminal justice over the past three decades, offers a complementary perspective on disciplinary cases in the military context. Restorative justice emphasises the repair of the harm done by an offence, the restoration of relationships damaged by misconduct, and the reintegration of the offender into the community through processes that involve all those affected by the offence, the offender, the victim where there is one, and the wider community. In the military context, restorative processes may be particularly valuable for disciplinary cases that arise from interpersonal conflicts, from the breakdown of trust within a unit, or from conduct that has damaged the professional relationships essential to unit effectiveness. The incorporation of restorative principles into the Bangladesh Air Force's disciplinary toolkit, through the development of structured processes for addressing interpersonal disciplinary matters that emphasise repair and restoration alongside accountability, would enrich the institutional response to misconduct and align it more closely with contemporary best practice in both civilian and military settings.

96.4 Expressivism and the Symbolic Function of Military Punishment

The expressivist theory of punishment, developed by theorists including Joel Feinberg and Andrew von Hirsch, holds that punishment communicates social condemnation of the offending conduct, expresses the community's values, and affirms the authority of the violated norm. On

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this view, punishment is not primarily about deterrence, rehabilitation, or even retribution in a strict sense: it is about meaning. Punishment is a form of moral communication, a social practice through which the community asserts its values and draws the line between conduct that is acceptable and conduct that is not.

In the military context, the expressivist understanding of punishment is particularly illuminating for the analysis of the symbolic dimensions of military disciplinary proceedings. When a senior officer is court-martialled for corruption, when an airman is formally sanctioned for a serious safety violation, or when a unit commander is relieved of command for misconduct, the institutional significance of these actions extends far beyond the specific consequences for the individual concerned. They express the institution's values, affirm the authority of the standards that were violated, and communicate to all members of the institution the seriousness with which those standards are maintained. This expressive function of military disciplinary action provides one of the strongest arguments for the consistent, transparent, and proportionate enforcement of disciplinary standards: inconsistency, opacity, and disproportionality in enforcement undermine the expressive function and create the message that standards are not genuinely maintained, which is more damaging to institutional integrity than any specific act of misconduct.

CHAPTER NINETY-SEVEN: CONTROVERSIAL AREAS IN BANGLADESH AIR FORCE DISCIPLINE: ANALYSIS AND COMMENTARY

97.1 The Use of Degrading Treatment in Institutional Settings: Constitutional Analysis

One of the most sensitive and controversial areas of military discipline worldwide is the practice of physical and psychological stress as an element of training and initiation. The question of where the line lies between legitimate hardship training, which prepares service members for the physical and psychological demands of operational service, and treatment that crosses the constitutional threshold of cruel, inhuman, or degrading treatment, is one that every military institution must address with clarity and honesty.

The Constitution of Bangladesh, in Article 35(5), absolutely prohibits torture or cruel, inhuman, or degrading punishment or treatment. This prohibition is not subject to any qualification and does not contain any exception for military training or operational preparation. The constitutional prohibition on degrading treatment applies to all state actors, including officers of the Bangladesh Air Force, in all circumstances, including the circumstances of military training.

The legal standard for what constitutes degrading treatment in the constitutional sense is not defined with precision in the Air Force Act or in any published interpretation of the constitutional provision. Comparative jurisprudence from the European Court of Human Rights, the Supreme Courts of Canada and the United States, and the UN Human Rights Committee provides relevant guidance. The comparative jurisprudence consistently holds that treatment is degrading when it humiliates or debases the individual to a degree that exceeds the ordinary limitations of service life, when it demonstrates a contempt for the individual's human dignity, or

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when it causes significant physical or psychological suffering beyond what is inherent in the legitimate purposes of the activity.

Applied to military training contexts, this standard permits the imposition of physical hardship, including sleep deprivation, physical exertion, and psychological stress, to the extent necessary for the legitimate purpose of preparing service members for the demands of operational service. It prohibits treatment that goes beyond this purpose and is designed to humiliate, degrade, or break the will of the individual for its own sake, as an expression of institutional power rather than as preparation for operational service. The line between these categories requires careful institutional management and cannot be left to the uncontrolled discretion of individual training instructors.

The institutional mechanisms for ensuring compliance with the constitutional prohibition on degrading treatment in training and in disciplinary detention contexts include clear rules and guidelines defining the boundaries of permissible training and disciplinary techniques, effective monitoring of training and detention conditions by supervisory personnel not involved in the specific training or detention, accessible complaint mechanisms for those who believe they have been subjected to improper treatment, and genuine investigation and accountability for allegations of degrading treatment. These mechanisms, together with a clear institutional commitment from leadership that the constitutional prohibition is genuine and will be enforced, are the practical expression of the constitutional standard in the daily life of the air force.

97.2 Drug and Alcohol Issues in the Bangladesh Air Force: Disciplinary and Administrative Dimensions

The disciplinary treatment of drug and alcohol offences in the Bangladesh Air Force involves a complex interaction of criminal law, administrative regulation, occupational health and safety considerations, and constitutional rights. The use of alcohol by air force personnel, and to a much lesser extent but with growing institutional concern the use of other substances, raises disciplinary issues of significant practical importance: intoxicated personnel present serious safety risks in an aviation environment where the consequences of impaired performance can be catastrophic.

The Air Force Act's disciplinary provisions applicable to intoxication on duty are clear and severe: the offence of drunkenness on duty is specifically prescribed in the Act, and the penalties reflect the seriousness with which the air force treats the compromise of operational safety through intoxication. The administrative provisions relating to alcohol testing, mandatory rehabilitation programmes, and the administrative consequences of repeated alcohol offences provide a complementary framework that operates alongside the purely disciplinary provisions.

The constitutional dimensions of drug and alcohol testing in the military context are more complex. Random drug and alcohol testing of service members, without specific grounds for suspicion, involves a degree of intrusion into the personal life of the individual that would not be constitutionally permissible in most civilian employment contexts without specific legislative authority. In the military context, the constitutional justification for random testing rests on the operational necessity argument: in an air force, where intoxicated personnel can cause

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catastrophic accidents, the institution has a legitimate and compelling interest in ensuring that personnel performing safety-critical functions are not under the influence of substances that impair their capacity to perform those functions. This interest is sufficiently strong to justify random testing, provided that the testing regime is appropriately regulated, that the procedures for testing and the consequences of positive results are clearly prescribed by law, and that the rights of personnel are appropriately protected in the administration of the testing programme.

97.3 Sexual Misconduct and the Reform Imperative

The issue of sexual misconduct in the armed forces has been one of the most challenging and controversial areas of military discipline worldwide over the past two decades, and it is one that the Bangladesh Air Force, like every modern military institution, must address directly and honestly. Sexual harassment, sexual assault, and gender-based misconduct in the military context raise issues that engage the constitutional rights of victims to personal dignity and freedom from violence, the constitutional requirements of equal treatment and non-discrimination, and the institutional obligations of the air force to provide a professional environment that is safe and respectful for all its members.

The experience of military justice systems worldwide has demonstrated consistently that the traditional approach of treating sexual misconduct as a disciplinary matter within the exclusive jurisdiction of the commanding officer has failed to provide adequate protection for victims and adequate accountability for perpetrators. The reasons for this failure are structural: commanding officers may be reluctant to take action against perpetrators who are professionally effective, may be personally acquainted with and sympathetic to perpetrators, may be concerned about the operational and unit cohesion implications of formal proceedings, or may themselves be subject to conflicts of interest if they are in the relevant chain of command. The structural reforms implemented in the United States through the FY2022 National Defense Authorization Act, which removed the prosecution of sexual offences from commanding officer authority and vested it in independent special trial counsel, and the comparable reforms in Canada, reflect a recognition that these structural problems require structural solutions.

For the Bangladesh Air Force, the development of a genuinely effective response to sexual misconduct requires both legislative reform and cultural change. The legislative reform required is the establishment of independent investigation and prosecution mechanisms for sexual misconduct cases, mechanisms that operate outside the chain of command of the alleged perpetrator and that provide genuine structural protection for the independence of the investigation and prosecution. The cultural change required is a genuine institutional commitment to a professional environment in which all personnel are treated with dignity and respect, in which sexual misconduct is understood as a serious violation of professional standards and constitutional rights rather than a private matter to be managed informally, and in which victims who come forward can do so with confidence that their complaints will be taken seriously and that their professional careers will not suffer as a result.

The institutional leadership's explicit and public commitment to zero tolerance for sexual misconduct, backed by visible and consistent enforcement of that commitment through the formal disciplinary system, is both constitutionally required and institutionally necessary.

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Constitutional compliance is not optional, and the protection of the constitutional rights of all service members, including their rights to personal dignity and freedom from gender-based violence, is a non-negotiable institutional obligation of the Bangladesh Air Force's leadership.

CHAPTER NINETY-EIGHT: THE DISCIPLINARY FRAMEWORK AND INSTITUTIONAL CULTURE: BUILDING AN AIR FORCE OF INTEGRITY

98.1 Institutional Integrity and Its Foundations

Institutional integrity, the quality of acting consistently with one's professed values across all circumstances, is the foundation of the professional credibility and public trust that any institution needs to discharge its functions effectively. For the Bangladesh Air Force, institutional integrity means acting consistently with the constitutional values of human dignity, fairness, and the rule of law, not only in formal proceedings and public contexts but in the daily practice of institutional life, in the exercise of routine disciplinary authority, in the management of personnel careers, and in the informal norms of unit culture.

The relationship between the formal disciplinary system and the informal institutional culture is one of mutual reinforcement: a formal system that is fair, transparent, and constitutionally grounded reinforces an institutional culture of integrity, while an institutional culture of integrity supports the effective operation of the formal system. Conversely, a formal system that is arbitrary, opaque, or disconnected from constitutional values undermines institutional culture, and an institutional culture that tolerates informal abuse of authority or informal discrimination operates as a standing contradiction of the formal system's values.

The development of institutional integrity in the Bangladesh Air Force requires attention to both dimensions. The formal disciplinary system must be reformed to bring it into full constitutional alignment, as argued throughout this Part. And the informal institutional culture must be actively shaped by the leadership to embody the values of fairness, transparency, and respect for the constitutional rights of all members of the institution.

98.2 Leadership, Ethics, and the Commanding Officer's Disciplinary Role

The commanding officer is the pivot of the institutional culture of discipline in any military unit. The way in which the commanding officer exercises disciplinary authority, the fairness and consistency with which they apply standards, the respect they show to the dignity of subordinates in disciplinary proceedings, and the clarity with which they communicate the standards and values of the institution through the exercise of disciplinary authority, are among the most powerful determinants of the institutional culture that develops in the unit under their command.

The Bundeswehr's concept of Innere Fuhrung, which was discussed in Part Seven as a model for the constitutionally grounded approach to military leadership, is directly relevant to the commanding officer's disciplinary role. The Innere Fuhrung concept holds that the commanding officer's authority is not an end in itself but a responsibility in service of the constitutional order,

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the professional standards of the air force, and the welfare and dignity of the personnel under command. On this view, the exercise of disciplinary authority is not merely a technical function of command but an expression of the commanding officer's moral character and professional values. A commanding officer who exercises disciplinary authority fairly, proportionately, and in compliance with constitutional requirements is not merely following the rules. They are demonstrating, by their conduct, the values that the institution stands for and the professional standard to which every officer of the Bangladesh Air Force aspires.

This ethical dimension of the disciplinary role has practical implications for the training and development of commanding officers. The preparation of officers for command responsibility must include serious and sustained engagement with the ethical dimensions of disciplinary authority: with the philosophical foundations of military discipline analysed at the beginning of this Part, with the constitutional requirements that Part Seven established, with the comparative experience of other military justice systems, and with the practical wisdom of experienced officers who have navigated difficult disciplinary situations with integrity and effectiveness. The development of this ethical dimension of command competence is as important as the development of technical and operational competence, and it must be reflected in the professional military education system of the Bangladesh Air Force.

98.3 Transparency, Accountability, and the Public Dimension of Military Discipline

The public dimension of military discipline, meaning the accountability of the military justice system to public scrutiny and democratic oversight, is an aspect of institutional integrity that is often underemphasised in military institutions accustomed to operating within a framework of institutional confidentiality and hierarchical accountability. In a constitutional democracy, the military justice system is not only accountable upward, to the chain of command and to the government, but outward, to the public, the Parliament, and the constitutional courts whose oversight function depends on access to information about how the system operates.

The public dimension of military discipline requires that the Bangladesh Air Force publish regular and comprehensive information about the operation of its disciplinary system: the number and nature of disciplinary proceedings, the outcomes of those proceedings, the statistics on appeals and their outcomes, and the general principles that guide the exercise of commanding officer discretion in disciplinary matters. This information, presented in a form accessible to the public and to parliamentary oversight committees, enables the democratic accountability of the military justice system and provides the data basis for informed evaluation of whether the system is operating in compliance with constitutional standards of fairness and proportionality.

The publication of such information need not compromise operational security or the confidentiality of specific proceedings in which individual privacy interests are legitimately protected. It is compatible with the appropriate protection of classified information and personal privacy to publish aggregate statistics on disciplinary outcomes, general policy guidance on the exercise of disciplinary authority, and information about the procedural framework within which the disciplinary system operates. The development of an annual report on the operation of the Bangladesh Air Force's military justice system, comparable to the annual reports published by the Judge Advocates General in comparable jurisdictions such as the United States and Canada,

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is a practical and constitutionally important transparency measure that should be adopted as part of the institutional reform agenda.

CHAPTER NINETY-NINE: CONSOLIDATION OF PART EIGHT: THE DISCIPLINARY REFORM AGENDA

99.1 Summary of Key Analytical Conclusions

Part Eight of this handbook has developed a comprehensive analysis of the disciplinary and administrative law of the Bangladesh Air Force, proceeding from philosophical foundations through substantive offences, procedural mechanisms, administrative frameworks, historical context, and theoretical frameworks to the institutional culture and reform agenda. The key analytical conclusions of this analysis may be summarised as follows.

Military discipline is a multi-dimensional concept whose purpose is not merely the punishment of misconduct but the formation of professional character, the maintenance of institutional standards, and the expression of the values that the institution embodies. The philosophical traditions of natural law, contractarian theory, and sociological analysis all contribute to the understanding of what military discipline is for and what its appropriate limits are.

The commanding officer's disciplinary authority is purposive rather than absolute, deriving its legitimacy from the purposes it serves rather than from institutional hierarchy alone. The combination of investigative, prosecutorial, and adjudicative functions in the commanding officer is a structural vulnerability of the existing system that requires reform through the separation of these functions in serious cases.

The specific offences under the Air Force Act range from matters of the greatest seriousness to catch-all provisions of uncertain scope. The conduct unbecoming and prejudicial to good order provisions require constitutional interpretation in light of the legality principle, limiting their application to conduct that genuinely and specifically threatens military effectiveness or professional standards.

Summary proceedings are constitutionally defensible as a proportionate response to minor misconduct but must comply with a constitutional minimum standard of procedural fairness that includes notice, a genuine hearing, impartiality, proportionate punishment, and effective review.

The administrative law framework of military service, including the ACR system, promotion and posting decisions, and administrative separation, must comply with the constitutional requirements of equal treatment, procedural fairness, non-arbitrariness, and effective remedy.

Military investigations must comply with the constitutional rights of persons under investigation, including the right to silence and the right to legal advice, and the institutional separation of safety investigations from disciplinary investigations is essential for both aviation safety and constitutional compliance.

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The historical and cultural dimensions of Bangladesh Air Force discipline reflect both the strengths of the institutional inheritance and the pathologies of the colonial and authoritarian periods, and the constitutional reform process of 2024-2025 creates an opportunity to address these cultural dimensions directly.

Institutional integrity, grounded in consistent constitutional compliance in the daily practice of disciplinary authority, is the foundation of the Bangladesh Air Force's professional credibility and public legitimacy.

99.2 The Disciplinary Reform Agenda: Priority Actions

The priority reform actions for Bangladesh Air Force disciplinary and administrative law, identified through the analysis of this Part, are as follows.

The first priority is the legislative reform of the Air Force Act to introduce independent prosecution for serious offences, separating the prosecutorial decision from the commanding officer authority in cases of sexual misconduct, serious physical harm, corruption, and other offences above a specified gravity threshold. This reform, modelled on the reforms implemented in the United States and Canada, addresses the deepest jurisprudential problem in the existing disciplinary system.

The second priority is the development of comprehensive statutory rights for accused persons in summary proceedings and in military investigations, including a statutory warning requirement before questioning, a right to legal advice, clear disclosure obligations, and enhanced appeal mechanisms that provide genuine independence from the original decision-maker.

The third priority is the reform of the ACR system to ensure that adverse assessments are communicated to the officer concerned and that a genuine opportunity to make representations is provided before the assessment is finalised, in compliance with constitutional natural justice requirements.

The fourth priority is the development of a clear statutory framework for the investigation of aviation accidents that separates the safety investigation and disciplinary investigation functions and provides appropriate protections for participants in safety investigations against the use of their evidence in subsequent disciplinary proceedings.

The fifth priority is the development and enforcement of clear institutional guidelines on the boundaries of permissible training and disciplinary techniques, in compliance with the constitutional prohibition on cruel, inhuman, and degrading treatment, accompanied by effective monitoring and complaint mechanisms.

The sixth priority is the establishment of independent investigation and prosecution mechanisms for sexual misconduct cases, with structural protections for the independence of the process and genuine protection for complainants against institutional retaliation.

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The seventh priority is the development and publication of an annual report on the operation of the Bangladesh Air Force's military justice system, providing the aggregate statistical information necessary for democratic accountability and for informed public assessment of the fairness and effectiveness of the disciplinary system.

The eighth priority is the reform of the professional military education system to integrate serious and sustained engagement with the ethical, constitutional, and philosophical dimensions of disciplinary authority into the preparation of all officers for command responsibility.

99.3 Looking Ahead to Part Nine

Part Nine of this handbook will examine the law of service conditions and personnel administration in the Bangladesh Air Force, addressing the legal framework governing the recruitment and enrolment of personnel, the conditions of service including pay, allowances, and welfare entitlements, the rights and obligations of service members in relation to leave, medical treatment, and accommodation, the framework of pension and post-service benefits, the legal mechanisms for the management of service injuries and deaths, and the emerging issues of occupational health and safety in the modern air force environment. Part Nine will also address the constitutional dimensions of service conditions, including the implications of the Constitution Reform Commission's proposal to make socioeconomic rights directly justiciable, and the developing international standards for the rights of military personnel as workers.

Part Nine will build on the constitutional analysis of Part Seven and the disciplinary analysis of Part Eight to develop a comprehensive account of the legal relationship between the Bangladesh Air Force and its personnel, understood not merely as an administrative relationship of command and obedience but as a constitutional relationship of mutual obligation in which the institution owes its members the same fidelity to constitutional values that it expects from them in the discharge of their duties.

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This Part draws on primary legal sources including the Bangladesh Air Force Act and the comparative legal texts of the United States military justice system as it stands in 2025-2026, including the revised AR 27-10 effective January 2025 and the 2025 Air Force Military Commander and the Law. The theoretical framework draws on the classical philosophy of punishment literature and on the more recent military jurisprudence scholarship of the Villanova Law Review symposium on non-judicial punishment published in early 2024. The historical sections draw on the publicly available information about the Bangladesh Air Force's institutional history, including the Wikipedia article current as of April 2026.

End of Part Eight

Editorial Note: Part Nine of this handbook will address the law of service conditions and personnel administration, completing the systematic analysis of the Bangladesh Air Force's legal framework. Parts Ten will address the future of Bangladesh Air Force law: the emerging challenges, the reform priorities, and the vision of a constitutionally grounded, professionally effective, and institutionally legitimate air force for the twenty-first century.

This Part is dedicated to the Judge Advocates of the Bangladesh Air Force, whose daily work of providing legal advice, ensuring procedural regularity, and maintaining the integrity of the military justice system represents an indispensable contribution to the institutional health and constitutional legitimacy of the service. Their work, often conducted without recognition, is the practical expression of the constitutional commitment that this handbook seeks to illuminate.

This handbook is intended as an educational and scholarly resource. It does not constitute legal advice. Officers seeking guidance on specific legal questions arising in the course of their duties should consult the legally qualified advisers of the Bangladesh Air Force.

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PART NINE

THE LAW OF SERVICE CONDITIONS AND PERSONNEL ADMINISTRATION IN THE BANGLADESH AIR FORCE: RIGHTS, ENTITLEMENTS, WELFARE, AND THE CONSTITUTIONAL DIMENSIONS OF MILITARY EMPLOYMENT

PREFATORY NOTE TO PART NINE

The law of service conditions occupies a peculiar and philosophically fascinating position within the broader architecture of Bangladesh Air Force law. It is neither purely administrative law, nor purely contract law, nor purely constitutional law, yet it draws simultaneously and inextricably from all three of these traditions. When an officer of the Bangladesh Air Force asks what pay he is entitled to, or what pension rights she has accumulated after twenty years of service, or whether the allowances he receives when posted to a remote station have any legal basis that can be challenged or enforced, these are not abstract questions of theory. They are questions about the fundamental legal relationship between the state and the individual who has dedicated years, and sometimes the whole productive period of his life, to the service of a national institution that demands extraordinary personal sacrifice in exchange for extraordinary professional privileges and protections.

This Part examines that legal relationship in its full complexity. It traces the legislative framework governing service conditions in the Bangladesh Air Force from the provisions of the Air Force Act of 1953, through the rules and regulations made thereunder, to the constitutional principles that inform and constrain the entire system. It examines the law of pay and allowances, of leave and welfare entitlements, of accommodation and medical care, of pensions and post-service benefits, and of the management of service injuries and deaths. It engages with the philosophical debates about the nature of military employment and the theoretical frameworks that scholars have used to understand what the state owes the individual it calls into uniform. It draws on comparative experience from democratic military establishments around the world, noting with particular attention the significant developments that have occurred in 2024 and 2025 in the United Kingdom, the United States, India, and other jurisdictions whose experience is instructive for Bangladesh. And it situates all of this within the constitutional transformation that Bangladesh has been undergoing since the Monsoon Revolution of July 2024, whose implications for service conditions law are profound, contested, and as yet incompletely worked out.

The reader of this Part should understand from the outset that the law of service conditions is one of the areas in which the gap between the formal legal framework and the lived experience of Bangladesh Air Force personnel is widest and most consequential. The formal framework is, in important respects, generous: the Air Force Act and the regulations made thereunder establish an elaborate system of entitlements, protections, and benefits that compare favourably with those available to government employees in many other categories. But the effective realisation of

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those entitlements depends on institutional culture, administrative practice, financial resource allocation, and the availability of genuine legal remedies when entitlements are denied, and in all of these areas there is significant room for improvement. This Part is written with the dual conviction that understanding the formal law is the necessary foundation for effective advocacy and reform, and that honest engagement with the gap between formal law and lived reality is the only way to serve the people whose conditions of service this law is meant to govern.

CHAPTER TWENTY-SEVEN: THE LEGAL NATURE OF MILITARY EMPLOYMENT: STATUS, CONTRACT, AND CONSTITUTIONAL RELATIONSHIP

27.1 The Foundational Jurisprudential Question: What Kind of Legal Relationship Is Military Service?

The law of service conditions in the Bangladesh Air Force cannot be properly understood without first addressing a foundational question of jurisprudence that has occupied legal scholars, courts, and legislators in every military jurisdiction in the world: what, precisely, is the legal character of the relationship between a military officer or airman and the state? Is it a contract? A status? A constitutional relationship? Or something altogether sui generis that resists assimilation to any of these familiar categories?

This question is not merely academic. The answer one gives to it determines, in significant ways, the rights that service personnel can enforce, the remedies available to them when those rights are denied, the extent to which ordinary employment law applies to their situation, and the degree to which the state can unilaterally modify the terms of their service without incurring legal liability. The stakes of the jurisprudential question, in other words, are immediately practical.

The oldest and most influential answer to this question is the answer of status. Under this conception, military service is not a contractual relationship that arises from the free agreement of two parties with relatively equal bargaining power. It is a legal status, defined and regulated by the sovereign, that attaches to the person who enters service and carries with it a fixed set of rights and obligations determined not by negotiation but by law. The status theory of military service has ancient roots, going back at least to the Roman legal conception of the miles as a person sui generis, subject to a distinctive legal regime that the general law of persons did not comprehend. In the medieval and early modern European tradition, the soldier's legal status was defined by his membership in a military household or retinue, a communal identity that carried both privileges and disabilities. In the British colonial legal tradition that most directly shaped Bangladesh Air Force law, the relationship between the soldier and the Crown was understood primarily in terms of status rather than contract: the soldier owed duties to the Crown by virtue of his commission or enrolment, and the Crown's obligations to the soldier were defined by royal warrant, regulation, and custom rather than by any agreement between the parties.

The contractual conception of military service represents a modernising and liberalising challenge to the status tradition. Under this view, the relationship between the state and the

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service member is, at its foundation, a contractual one, albeit a contract of a special kind, entered into voluntarily and with the understanding that some of the ordinary incidents of employment are modified by the requirements of military service. The contractual view gained traction in the twentieth century as civilian employment law developed more robust protections for workers and as democratic states came increasingly to recognise that the distinctive demands of military service did not justify treating service members as having no legal relationship with their employer that ordinary principles of law could reach or protect.

The constitutional conception represents a more recent and arguably more sophisticated theoretical framework. Under this view, the relationship between the state and the service member is fundamentally a constitutional relationship, grounded in the constitutional order that defines the mutual rights and obligations of the state and the individuals who serve it. The state's power to call individuals into military service, to define the terms of that service, and to modify those terms is constrained by constitutional principles of equality, due process, dignity, and proportionality. The service member's rights arise not merely from contract or statute but from the constitutional order itself, and constitutional review is available when those rights are violated.

In Bangladesh, as in most South Asian jurisdictions, the formal position of the courts and the legislature has been that military service is primarily a matter of status defined by law, and that service members' rights must be found primarily in the relevant legislation and regulations rather than in the general law of contract or employment. The Air Force Act of 1953 does not frame the relationship between service personnel and the state in contractual terms. It speaks of terms of enrolment, commissions, regulations, and the usages of the service, all of which are categories of status rather than contract. The terms and conditions of service are determined by the Government and the Air Force authorities, not negotiated between the parties.

This formal position, however, has been substantially complicated in Bangladesh as elsewhere by the constitutional framework, by the general principles of administrative law, and by the growing influence of international human rights standards on the interpretation of domestic law. The Constitution of Bangladesh does not explicitly address the legal character of military service, but its provisions on fundamental rights, equality, and due process apply, in principle, to the relationship between service members and the state. The High Court Division of the Supreme Court has, on numerous occasions, exercised judicial review jurisdiction over decisions affecting the service conditions of military personnel, and in doing so has implicitly recognised that the purely status-based model of military employment is insufficient as an account of the legal relationship between service members and the state.

27.2 The Historical Evolution of Service Conditions Law: From Colonial Patronage to Constitutional Entitlement

The history of service conditions law in what is now Bangladesh is a history of the progressive, uneven, and contested transition from a model of royal or imperial patronage to a model of legal entitlement. Understanding this history is essential to understanding both the present shape of the law and the reform challenges that remain.

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In the British colonial period, the service conditions of Indian Army personnel were determined substantially by the unilateral decisions of the colonial military administration and the Government of India. Pay scales, allowances, pension entitlements, and the conditions of medical care and accommodation were established by Royal Warrants, Army Regulations, and the orders of the Commander-in-Chief and the Indian Army hierarchy, without any meaningful participation by the soldiers themselves. The distinction between a legal entitlement and an administrative grace was blurred to the point of irrelevance: everything that a soldier received was understood as given by the sovereign authority, and the idea that a soldier could go to court to enforce his claims against the military administration would have been regarded as fundamentally incompatible with the nature of military service.

This model of colonial patronage had specific features that shaped the law of service conditions in the post-independence period in ways that are still visible in the Bangladesh Air Force Act of 1953. The emphasis on administrative discretion rather than legal right in the determination of pay and pension matters, the absence of formal mechanisms for appeal or review of service conditions decisions, the assumption that service conditions could be unilaterally altered by the military administration without legal liability, and the treatment of welfare provisions as benefits to be extended or withdrawn at administrative discretion rather than rights to be enforced in law, all derive from the colonial model of military patronage.

The transition from colonial patronage to legal entitlement has been driven by several forces operating simultaneously and sometimes in conflict. The independence of Bangladesh in 1971 and the adoption of the Constitution in 1972 created, at least in principle, a constitutional framework within which the state's obligations to service members could be understood as matters of legal right rather than administrative grace. The development of administrative law jurisprudence in the High Court Division and the Appellate Division, drawing on the rich tradition of English administrative law while adapting it to the Bangladeshi constitutional context, has progressively extended the reach of judicial review into the domain of service conditions decisions. The international human rights framework, including the International Covenant on Economic, Social and Cultural Rights ratified by Bangladesh, has created at least a normative pressure toward the recognition of service members' entitlements as matters of right rather than privilege.

At the same time, the institutional culture of the Bangladesh Air Force retains significant elements of the colonial model of administrative discretion. Senior officers exercising administrative authority over the conditions of service of their subordinates do not always think of themselves as acting under legal constraint. The formal legal framework provides extensive discretionary powers to military authorities, and the exercise of those powers is not always subject to effective legal challenge. The gap between the formal recognition of legal entitlements and the practical ability of service members to enforce those entitlements against recalcitrant military administrations remains a central problem of Bangladesh Air Force service conditions law.

27.3 The Theory of the Social Contract in Military Service: Rawlsian, Communitarian, and Critical Perspectives

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The question of what the state owes those who serve in its armed forces is one that political philosophy has addressed from a variety of theoretical perspectives, each of which generates a different account of the legal and moral foundations of service conditions entitlements. A serious handbook of Bangladesh Air Force law cannot avoid engaging with these philosophical dimensions, because the theoretical framework one adopts when thinking about military service has direct practical implications for how one interprets the existing law and what reforms one advocates.

The Rawlsian liberal tradition, associated primarily with John Rawls' theory of justice as fairness, offers one account of the moral foundations of military service conditions. Rawls' famous difference principle holds that social and economic inequalities are just only if they benefit the least advantaged members of society. Applied to military service, this principle suggests that the burdens of military service, which fall disproportionately on certain individuals and demographic groups, can only be justified if the institution of military service, including the conditions under which service personnel are employed, is structured in a way that is fair to those who bear those burdens. The fairness of military service conditions, on this view, is not merely a matter of administrative efficiency but of basic justice.

The Rawlsian framework has been applied to military service conditions by a number of contemporary political philosophers. Jeff McMahan, writing in the tradition of analytical philosophy of war, has argued that military personnel who are exposed to lethal risk in the service of the state are owed not merely adequate compensation but a special kind of institutional recognition of their sacrifice that goes beyond what market mechanisms alone would produce. The obligation to provide adequate pay, pension, medical care, and welfare support to military personnel and their families is, on this view, a requirement of basic justice arising from the disproportionate burdens that military service imposes.

The communitarian tradition, associated with philosophers such as Alasdair MacIntyre, Michael Sandel, and Michael Walzer, offers a different account of the moral foundations of military service conditions. Rather than grounding the obligations of the state to service personnel in abstract principles of justice, the communitarian tradition grounds them in the concrete traditions, shared values, and communal practices of the military institution itself. What the Bangladesh Air Force owes its members is determined, on this view, not primarily by abstract principles but by the shared understandings, practices, and expectations that constitute the institutional community of the service. The obligations of the institution to its members arise from membership in a community with a particular history, ethos, and shared commitment, and those obligations are therefore partly constituted by the specific history and culture of the Bangladesh Air Force rather than by principles that apply universally.

The communitarian perspective has practical implications that are sometimes in tension with the Rawlsian perspective. It suggests that the distinctive culture and traditions of the Bangladesh Air Force should be taken seriously when interpreting service conditions entitlements, and that reforms that sever the service conditions framework from the institutional traditions and communal expectations of the service may undermine the very basis of the obligations they are designed to fulfil. At the same time, it warns against a romanticism of institutional tradition that

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obscures the ways in which those traditions may themselves encode injustice, discrimination, or the suppression of legitimate claims.

Critical legal scholars, drawing on the traditions of critical race theory, feminist legal theory, and post-colonial studies, offer yet a third perspective on the moral and political foundations of military service conditions law. From this perspective, the existing framework of service conditions law in Bangladesh is not simply a neutral administrative system for distributing benefits and imposing obligations. It is a system that reflects and reproduces specific patterns of power, privilege, and exclusion that are embedded in the institutional culture and historical traditions of the Bangladesh Air Force. The colonial inheritance of the service conditions framework carries with it assumptions about who is a legitimate member of the military community, whose conditions of service matter, and whose claims deserve legal recognition, that are not politically neutral but rather reflect the specific power relations of the colonial and post-colonial periods.

The critical perspective highlights, for example, the particular disadvantage experienced by female service personnel in a conditions-of-service framework designed primarily with male service members in mind, the potential discrimination embedded in allowance structures that privilege married personnel with dependent families in ways that may not reflect the actual diversity of contemporary service members' household arrangements, and the extent to which the administrative discretion that permeates the service conditions framework may be exercised in ways that reflect racial, ethnic, regional, or ideological biases that the formal law does not prohibit.

These philosophical perspectives are not merely theoretical. They shape the questions one asks about the Bangladesh Air Force service conditions framework, the interpretive choices one makes when the formal law is ambiguous, and the reform agenda one advocates when the existing framework falls short of what justice requires. A handbook that aspired to intellectual honesty could not simply describe the existing law without engaging with the philosophical framework within which that law should be understood and evaluated.

CHAPTER TWENTY-EIGHT: RECRUITMENT, ENROLMENT, AND COMMISSION: THE LEGAL ENTRY INTO SERVICE

28.1 The Legal Framework of Recruitment: Constitutional Dimensions and Statutory Authority

The entry of a person into the Bangladesh Air Force, whether as an officer receiving a commission or as an airman or airwoman enrolled under the Act, is the moment at which the legal relationship of military service is created. The legal framework governing this entry is more complex and constitutionally significant than is sometimes appreciated, and the decisions made at the entry stage have legal consequences that persist throughout the individual's service and, through pension and post-service entitlements, beyond it.

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The constitutional foundation of military recruitment in Bangladesh is Article 45 of the Constitution, which grants Parliament the power to make laws, and this power has been exercised through the Air Force Act of 1953 and the rules made thereunder. The Act establishes the framework within which officers are commissioned and airmen are enrolled, defines the categories of persons who may be subject to the Act, and provides the legal basis for the terms and conditions of service. But the constitutional dimensions of the recruitment process extend well beyond these formal provisions.

The Constitution's guarantee of equality before the law under Article 27 and the prohibition of discrimination on grounds of religion, race, caste, sex, or place of birth under Article 28 apply, in principle, to the recruitment process of the Bangladesh Air Force. These constitutional provisions mean that the eligibility criteria for recruitment must be justifiable as reasonably related to the legitimate requirements of military service and not merely as a reflection of administrative convenience or historical preference. Where eligibility criteria exclude particular groups from air force service on grounds that are not genuinely related to the functional requirements of service, those criteria are constitutionally suspect.

The practical application of these constitutional principles to air force recruitment is a matter of some complexity. The Air Force Act and regulations establish various eligibility criteria, including minimum and maximum age requirements, physical fitness standards, educational qualifications, and character requirements. Some of these criteria have been controversial in their application, and the courts have been called upon to consider whether particular recruitment decisions comply with the constitutional guarantee of equal treatment.

The question of gender in air force recruitment has been one of the most significant constitutional issues in this domain. The Bangladesh Air Force has, over time, expanded the categories of service open to female personnel, but the pace and completeness of this expansion have been the subject of ongoing debate. In comparative perspective, the trend in democratic military establishments worldwide has been toward the progressive opening of all branches and specialisations of air force service to female personnel. The United States completed the formal process of opening all combat roles to women in 2015 and 2016, and subsequent experience has not borne out the concerns that were used to justify exclusion. The United Kingdom similarly eliminated all gender-based exclusions from combat roles in 2016. Australia completed the process somewhat earlier. These comparative examples are relevant to the interpretation of the constitutional framework governing gender in Bangladesh Air Force recruitment, since they demonstrate that the functional requirements of modern air force service do not, in general, justify the exclusion of women from any category of service.

The question of freedom fighters' children and special recruitment quotas is another area of constitutional significance. The Bangladesh Constitution, through its provisions on special measures for disadvantaged groups and the recognition of the sacrifices of freedom fighters, provides the constitutional basis for preferential treatment of the children of freedom fighters in recruitment to public service positions, including the armed forces. Recruitment circulars of the Bangladesh Air Force consistently provide for age relaxation and in some cases preferential consideration for the children of freedom fighters, and the 2025 recruitment circulars reviewed for this handbook make specific reference to this preference. The jurisprudential question is

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whether such preferences are consistent with the equal treatment guarantee, and the answer, following a well-established line of reasoning from constitutional courts in comparable jurisdictions, is that they are, provided they are justified by reference to a legitimate remedial or recognition purpose and do not effectively exclude other meritorious candidates from consideration.

28.2 The Commission: Legal Nature, Conferral, and Terms

An officer's commission is the legal instrument through which the state confers upon an individual the authority to command, to exercise the disciplinary powers prescribed by the Air Force Act, to represent the Bangladesh Air Force in the performance of its functions, and to bear the legal responsibilities that attach to the holding of commissioned rank. The commission is not merely an administrative appointment. It is a legal instrument of some constitutional significance, grounding the officer's authority in the sovereign power of the state and connecting the officer's individual agency to the collective enterprise of national defence.

The legal nature of the commission has been the subject of considerable jurisprudential analysis in comparable jurisdictions. In the United Kingdom, the commission was historically understood as a grant of the royal prerogative, and the terms of service of commissioned officers were therefore not subject to the ordinary employment law framework that applied to civilian workers. The gradual erosion of this prerogative-based model and its replacement by a statutory framework has been one of the major developments in British military law over the past several decades, and the practical consequence has been a significant expansion of the legal protections available to officers who believe that the terms of their commission or the conditions of their service have been unlawfully determined or applied.

In Bangladesh, the commission is granted by the Government on the recommendation of the Air Force authority, and its terms are governed by the Air Force Act, the rules made thereunder, and the applicable regulations. The commission establishes the officer's rank, the date from which his seniority runs for purposes of promotion and precedence, and the branch of the service to which he is assigned. The commission creates a legal relationship between the officer and the state that carries specific rights and obligations, and the unilateral termination or modification of that relationship by the state is subject to the constitutional and administrative law constraints examined in Part Eight of this handbook.

One question of continuing jurisprudential interest concerns the extent to which the terms of the commission constitute a binding legal commitment on the part of the state. When an officer is commissioned on the understanding that he will be entitled to a particular pension after a specified period of service, or that he will be eligible for promotion to senior rank on the basis of specified criteria, and the state subsequently changes those terms to his disadvantage, can he enforce the original terms as a matter of legal right? The answer in Bangladesh, as in comparable jurisdictions, is nuanced. The state has considerable authority to modify the terms of military service for prospective purposes, but there are constitutional and perhaps contractual constraints on its ability to do so retroactively in ways that defeat the reasonable expectations of officers who have committed their careers to the service on the basis of the terms that were in force when they were commissioned.

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The jurisprudence of the Supreme Court of Bangladesh on legitimate expectation, developed primarily in the context of administrative law, provides a framework for analysing these cases. If the state has made a clear and unambiguous representation, whether in the commission itself, in the regulations applicable at the time of commissioning, or in subsequent official communications, that an officer will be entitled to a particular benefit or will be treated in a particular way, and if the officer has relied on that representation in ordering his affairs, then the doctrine of legitimate expectation may protect him against a change in policy that would defeat that expectation, unless there is an overriding public interest that justifies the change.

28.3 Enrolment of Airmen and Women: Legal Framework and Rights

The enrolment of airmen and airwomen into the Bangladesh Air Force is governed by the provisions of the Air Force Act and the rules made thereunder, and by the specific terms of the enrolment forms that establish the individual's relationship with the service. Unlike commissioned officers, whose entry into service is formalised by the grant of a commission, airmen and airwomen enter service through a process of enrolment in which they formally agree to serve in the air force for a specified period under the terms prescribed by the Act and the applicable regulations.

The legal character of enrolment has been debated in the jurisprudential literature. Is enrolment a contract? The formal answer, consistent with the status theory of military service, is that it is not an ordinary contract but a special form of public law relationship in which the terms of service are defined by statute and regulation rather than by agreement. But the process of enrolment inevitably involves elements that look contractual: the recruit is told what pay, pension, medical care, and other benefits he or she will receive; the recruit agrees to serve for a specified term; and the recruit is, at least implicitly, relying on those representations when making the decision to enlist. The denial that any contractual rights arise from this process sits uncomfortably with the ordinary understanding of what it means to enter into a legal relationship on the basis of representations about what one will receive in exchange for one's commitment.

Section 3 of the Air Force Act provides that every person subject to the Act under the specified clauses shall remain so subject until duly retired, discharged, released, removed, or dismissed from the service. This provision establishes the continuity of the legal relationship and makes clear that the individual cannot unilaterally withdraw from service except through the formal mechanisms established by the Act. The practical significance of this provision is that enrolled personnel have a much more limited right to resign or leave service than civilian employees: they are bound by the terms of their enrolment for the specified period, and departure without authorisation constitutes a serious military offence.

The Air Force Act also establishes the circumstances in which an enlisted person can be released from service before the completion of his or her term, including release at the discretion of the appropriate authority, discharge on grounds of medical unfitness, and discharge on compassionate grounds. The legal framework governing these discharges is examined in detail later in this Part, in connection with the discussion of administrative separation from service.

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28.4 Pre-Commissioning and Pre-Enrolment Legal Relationships: Cadets, Trainees, and Reserve Personnel

The Bangladesh Air Force Academy, located at Jessore, is the primary institution for the training and professional formation of officer cadets who will receive commissions in the Bangladesh Air Force. The legal status of officer cadets during the period of their training raises interesting questions that are not always clearly addressed in the formal legal framework.

Are officer cadets, during the period of their pre-commission training at the Academy, subject to the Air Force Act? The Act applies to officers and airmen, and a cadet is neither precisely an officer nor precisely an airman, being in a liminal status between the civilian world from which he has come and the military world he is preparing to enter. The practical answer, reflected in the operational practice of the Bangladesh Air Force Academy, is that cadets are governed by a specific legal and regulatory framework applicable to the Academy, which incorporates significant elements of military discipline without fully subjecting cadets to the complete provisions of the Air Force Act. Cadets are, in particular, subject to the disciplinary authority of the Academy commandant and to the Academy's own code of conduct, which includes standards of behaviour, performance, and professional character that are more exacting than those applicable to civilian students but somewhat different in their legal basis from the disciplinary provisions of the Air Force Act that apply to commissioned and enrolled personnel.

The legal position of reserve personnel, including members of the Bangladesh Air Force Volunteer Reserve, is addressed explicitly in the Air Force Act. Section 4(iv) of the Act defines the Air Force to include persons belonging to the Bangladesh Air Force Reserves when called up for training or exercise or into actual service. The legal status of reserve personnel, and the conditions of service applicable to them during periods when they are called up, is an area of law that has attracted significant attention in comparable jurisdictions in recent years.

In the United Kingdom, the landmark case of Milroy v Ministry of Defence, decided by the Employment Tribunal in August 2024, established that denying reservists access to the Armed Forces Pension Scheme constituted less favourable treatment of part-time workers compared with full-time regulars, and that this differential treatment was not justified by the administrative burden or cost of inclusion. The Tribunal's ruling that the denial was disproportionate has implications that extend well beyond the specific facts of that case: it represents a significant judicial affirmation of the principle that reserve service members, who accept comparable risks and perform comparable duties to regular personnel during periods of activation, are entitled to comparable conditions of service, including pension entitlements. The Ministry of Defence appealed the decision to the Employment Appeal Tribunal in September 2024, and the outcome of that appeal will be of considerable interest to military lawyers in Bangladesh and other jurisdictions where the conditions of service of reserve personnel are similarly structured.

The Bangladesh Air Force Volunteer Reserve, whose members are subject to the Act when called up for training or actual service, presents similar jurisprudential questions in the Bangladesh context. When a reserve airman is called up for a period of active service and sustains a service injury or death, what entitlements to pension, compensation, or welfare support accrue? When reserve personnel are mobilised for extended periods, as may occur in times of

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national emergency or major operational deployments, do they have claims to conditions of service equivalent to those of their regular counterparts? These questions are addressed to some extent in the regulations applicable to the Volunteer Reserve, but the existing framework is not always clear or comprehensive, and there is significant scope for legislative reform and judicial clarification.

CHAPTER TWENTY-NINE: PAY, ALLOWANCES, AND FINANCIAL ENTITLEMENTS: THE LEGAL ARCHITECTURE OF MILITARY COMPENSATION

29.1 The Philosophy of Military Pay: Compensation, Recognition, and the Theory of Public Service

Before examining the specific legal provisions governing pay and allowances in the Bangladesh Air Force, it is worth pausing to consider the philosophical question that underlies the entire structure of military compensation: what is military pay for, and what principles should govern its determination?

This is not a question with an obvious answer. At one level, military pay is simply compensation for labour: air force personnel provide services to the state, and the state compensates them for those services in the form of wages. On this straightforward view, the appropriate level of military pay is determined by the principles that govern compensation in any other labour market, adjusted for the distinctive features of military service that make it different from civilian employment.

But military pay has always been understood as something more than, and different from, ordinary wages. It is also a form of recognition: an acknowledgment by the state of the particular sacrifices, risks, and demands of military service that go beyond what is asked of civilian employees. The risk of death or serious injury in the performance of duty, the requirement to serve in any part of the world at the direction of the military authority, the restriction of personal freedom that military service involves, the separation from family that operational deployments require, and the total institutional character of military life that makes off-duty and on-duty behaviour equally subject to military authority, all distinguish military service from civilian employment in ways that the compensation structure must take into account if it is to be fair.

Military pay is also, in part, an instrument of national policy: a mechanism for attracting and retaining in service the particular kind of people, with the particular combination of skills, character, and commitment, that an effective national air force requires. In a context where the Bangladesh Air Force competes for talent with the civilian labour market, with other branches of the armed forces, and with the armed forces of other nations in the context of UN peacekeeping deployments, the attractiveness of the compensation package is a factor in the quality of the force that can be assembled and maintained.

The tension between these different functions of military pay, as compensation, as recognition, and as policy instrument, creates recurring difficulties in the design and administration of pay

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systems. A pay system optimised purely for market competitiveness may not adequately recognise the non-compensable dimensions of military sacrifice. A pay system organised primarily around recognition of sacrifice may not provide the right incentives for the recruitment and retention of scarce technical skills. A pay system designed as a policy instrument for managing the composition of the force may not always produce outcomes that are fair to the individuals who are subject to it.

The international comparative experience is instructive in this regard. In the United States, the Quadrennial Review of Military Compensation (QRMC), the body charged with periodically reviewing the structure and level of military compensation, published its 14th report in January 2025 and found that the total compensation of service members, measured by regular military compensation, substantially exceeded the Department of Defense's historical benchmark of the 70th percentile of comparable civilian wages, standing at the 83rd percentile for enlisted personnel and the 76th percentile for officers. The QRMC recommended raising the benchmark to the 75th percentile to maintain competitiveness against future labour market challenges, and the US Congress enacted significant pay increases for junior enlisted service members as part of the National Defense Authorization Act for Fiscal Year 2025, signed in December 2024. These developments reflect a recognition that military compensation must remain responsive to changes in the civilian labour market if the armed forces are to recruit and retain the people they need.

For Bangladesh, the analogous challenge is somewhat different. The relevant comparison is not primarily with the civilian labour market in the formal sector, which, while growing, remains structurally different from the labour markets of advanced industrial economies. The relevant comparison includes the opportunities available in UN peacekeeping missions, where Bangladesh has been one of the world's largest troop-contributing countries and where allowances paid by the United Nations have historically represented a significant supplementary income stream for personnel from developing countries. The structure of Bangladesh Air Force pay and allowances must therefore be understood in the context of this distinctive international dimension of military service, which is explored further in a later section of this chapter.

29.2 The Statutory Framework of Pay: Air Force Reward and Its Legal Definition

The Air Force Act of 1953 defines "Air Force reward" in Section 4(vii) as including "any gratuity or annuity for long service or good conduct, badge pay or pension, and any other Air Force pecuniary reward." This definition is broad and inclusive, and it establishes the general legislative framework within which the specific provisions of pay and allowances operate. The significance of this definition is that it brings the various components of financial reward that air force personnel receive within the scope of the Act, and therefore within the legal framework that the Act provides, including the provisions relating to forfeiture and deduction of pay as punishment.

The specific rates of pay applicable to officers and airmen of the Bangladesh Air Force are not prescribed directly in the Air Force Act itself, which is a framework statute rather than a detailed financial code. They are determined by the Government through the periodic revision of pay scales applicable to the armed forces, which are typically revised in connection with national pay

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commission awards and defence-specific pay reviews. The relationship between the general national pay scale revisions that apply to civil servants and the specific pay scales applicable to military personnel is a matter of some complexity in Bangladesh, reflecting the principle that military service involves distinctive responsibilities and risks that justify a differentiated compensation structure.

The legal force of pay scales applicable to Bangladesh Air Force personnel derives from the delegated legislation and executive decisions through which the Government exercises its authority to prescribe pay rates under the Air Force Act and the associated regulatory framework. Officers and airmen are entitled to receive the pay applicable to their rank and the applicable pay scale as a matter of legal right, and any failure to pay the correct rate is an unlawful withholding of a statutory entitlement that can, in principle, be enforced through the courts.

The practical mechanism through which pay is determined and revised involves a process of periodic review, typically conducted by a Pay Commission or similar body established by the Government, whose recommendations are accepted, modified, or rejected by the Government before implementation. The Bangladesh military pay scales have been revised periodically in line with national pay commission recommendations, though the timing and adequacy of such revisions have sometimes been contested.

A significant jurisprudential issue that arises in the context of military pay is the question of pay parity between the armed forces and the civil service. Military personnel have argued, and military associations in various countries have periodically campaigned for the recognition, that military service carries distinctive risks and responsibilities that justify higher pay rates than those applicable to civil servants of comparable seniority. The counter-argument, advanced by defenders of existing pay structures, is that the overall compensation package of military personnel, including generous housing allowances, medical care, canteen facilities, and other non-monetary benefits, already provides a higher total remuneration than the basic pay rates suggest, and that pay parity comparisons that focus only on basic salary are therefore misleading.

The resolution of this debate in the Bangladesh context requires a careful analysis of the total compensation package of air force personnel, including not just basic pay but all the allowances, benefits, and non-monetary compensation that form part of the service conditions package. The following sections of this chapter undertake that analysis.

29.3 Allowances: Legal Basis, Categories, and Constitutional Dimensions

Allowances form a critically important component of the total financial compensation of Bangladesh Air Force personnel, and in many cases the combined value of the allowances an officer or airman receives substantially exceeds the basic pay to which his rank entitles him. The legal framework governing allowances is therefore of considerable practical significance, and the constitutional dimensions of allowance decisions have been the subject of judicial attention in Bangladesh and comparable jurisdictions.

Allowances in the Bangladesh Air Force may be broadly categorised into several types, each with its own legal basis and regulatory framework. The principal categories are: ration allowance

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or subsistence allowance, which compensates personnel for the cost of food; housing allowance or accommodation allowance, which compensates personnel who are not provided government accommodation for the cost of renting civilian housing; travel allowance, which compensates personnel for the costs of travel incurred in the course of duty; operational or field service allowances, which compensate personnel for the additional hardships and expenses of service in operational theatres or remote locations; family allowances, which compensate personnel for expenses associated with the maintenance of dependents; and special allowances applicable to particular branches or specialisations of the service, such as flying pay applicable to aircrew.

The legal basis of each of these allowances is found in the relevant Air Force Regulations, financial regulations applicable to the armed forces, and the orders of the Government and the appropriate service authority. An allowance is not a discretionary gratuity but a legal entitlement that attaches to the officer or airman in the circumstances prescribed by the applicable regulations. The failure to pay a correctly due allowance is therefore an unlawful administrative act that can, in principle, be challenged through the court system.

Flying pay, applicable to aircrew officers and technical personnel engaged in airborne duties, occupies a position of particular importance in the allowance framework of an air force. Flying pay compensates aircrew for the particular risks and demands of aviation duties, and its payment is typically conditional on the maintenance of the minimum flying currency requirements prescribed by the relevant regulations. The legal questions that arise in connection with flying pay include: whether a pilot who is temporarily grounded for medical reasons continues to be entitled to flying pay during the period of medical grounding; whether a pilot who is posted to a ground appointment but who maintains flying currency on a voluntary basis is entitled to flying pay during that posting; and whether the standards required for the maintenance of flying currency can be unilaterally modified by the Air Force authority in ways that affect pre-existing entitlements.

Housing or accommodation allowance is another area of significant legal and financial importance. In the Bangladesh Air Force, officers and airmen who are not provided government accommodation at their posting station are entitled to receive accommodation allowance to compensate them for the costs of renting civilian housing. The adequacy of accommodation allowance, and the fairness of the criteria by which it is determined, have been persistent sources of complaint in armed forces worldwide. In the United States, the Basic Allowance for Housing (BAH) system, which has been the subject of multiple legislative revisions and judicial interpretations, is designed to ensure that service members of similar rank and dependency status can afford comparable housing quality regardless of their duty location. In Bangladesh, the equivalent allowance faces similar challenges of adequacy and geographical variation, and the adequacy of the allowance in the context of rapid urbanisation and rising rental costs in cities like Dhaka has been a recurring concern.

The United Kingdom's experience with the Joint Personnel Administration system and the ongoing review of the accommodation and housing allowance framework, most recently updated in 2024 as part of the broader review of armed forces service conditions, illustrates the complexity of getting accommodation allowances right in a dynamic housing market. The core principle, which is equally applicable in Bangladesh, is that the state's obligation to provide

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accommodation or an adequate allowance for accommodation is not merely an administrative convenience but a legal entitlement grounded in the conditions of military service and, in constitutional terms, in the principle that the state cannot require an individual to serve without adequately providing for his or her basic living conditions.

29.4 Forfeiture and Deduction of Pay: Legal Constraints and Proportionality

The Air Force Act provides for the forfeiture and deduction of pay as a consequence of certain disciplinary findings and as a means of recovering money owed by service personnel to the service. These provisions are an important aspect of the financial conditions of service, and their application raises significant questions of constitutional principle that deserve careful analysis.

Section 80 of the Air Force Act and related provisions establish the circumstances in which pay may be forfeited or deducted. Forfeiture of pay may occur as a consequence of a period of absence without leave, during which the officer or airman is typically not entitled to pay for the period of absence. Deduction of pay may be ordered as a punishment by a court martial or a commanding officer exercising summary powers, or as a mechanism for recovering amounts owed to the Government or the service.

The constitutional questions raised by forfeiture and deduction of pay are significant. The principle that punishment must be proportionate to the offence, derived from the constitutional prohibition on excessive punishment and from the general principles of proportionality that inform administrative law, applies to financial punishments just as it does to other forms of punishment. A finding of guilt for a minor disciplinary offence that results in the forfeiture of a substantial portion of an officer's pay for an extended period may be disproportionate in a way that would not arise from the same offence resulting in a minor formal warning. The existing framework does not always provide adequate safeguards against disproportionate financial punishment, and this is an area in which legislative reform would be desirable.

The deduction of pay for the recovery of debts owed to the Government is a further area of potential constitutional concern. When an officer or airman has received an overpayment of pay or allowances, whether through administrative error or through his own misrepresentation, the Air Force authority has a legitimate interest in recovering the overpayment. But the manner in which recovery is effected must comply with the constitutional principles of natural justice: the individual must be given notice of the alleged overpayment, an opportunity to contest it, and, if recovery is ordered, a repayment schedule that does not reduce his remaining pay below a level sufficient for reasonable subsistence. The failure to observe these procedural requirements in the recovery of military pay overpayments has been the subject of judicial criticism in several comparable jurisdictions, and is an area that merits attention in the Bangladesh context.

29.5 UN Peacekeeping Allowances: International Dimensions of Military Financial Entitlements

Bangladesh has been one of the largest contributors of military personnel to United Nations peacekeeping operations for several decades, and the Bangladesh Air Force has participated in numerous peacekeeping missions around the world. The allowances paid by the United Nations

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to peacekeeping personnel represent a significant financial dimension of Bangladesh Air Force service conditions that does not appear directly in the domestic legislative framework but has substantial practical significance for the financial welfare of deployed personnel and their families.

The United Nations pays troop-contributing countries (TCCs) a standard daily allowance for each deployed military personnel at a rate negotiated between the UN and the TCC. The current UN troop reimbursement rate has been periodically revised, and as of 2024 stands at a level that has been the subject of ongoing discussions between the United Nations and troop-contributing countries, many of which have argued that the rates do not adequately reflect the actual costs of maintaining deployed forces or the risks they face.

The allocation of UN peacekeeping allowances between the Bangladesh Government and the deployed personnel, and the legal framework governing this allocation, has been a sensitive issue in Bangladesh military circles. The Government retains a portion of the UN reimbursement to offset the costs of maintaining the deployed force, and the remainder is paid to the individual personnel as a special mission allowance. The adequacy of this allowance, and the transparency of the mechanism by which the UN reimbursement is divided between the Government and the individual, have been matters of periodic concern.

From a legal perspective, the question of whether deployed personnel have a legal entitlement to a specific share of the UN reimbursement, or whether the determination of the mission allowance is a matter of administrative discretion, is of some importance. If it is an administrative discretion, then the Government can reduce the individual's share of the UN reimbursement without giving rise to a legal challenge. If it is a legal entitlement, then the individual can challenge a reduction in the mission allowance as unlawful, provided the relevant regulations or orders establish a specific entitlement. The existing regulatory framework is not always clear on this point, and the development of a more transparent and legally grounded framework for the allocation of UN reimbursement would serve both the interests of individual personnel and the institutional integrity of the Bangladesh Air Force.

The broader jurisprudential question raised by UN peacekeeping allowances concerns the relationship between the international legal framework within which peacekeeping operations are conducted and the domestic legal framework governing the conditions of service of the personnel who participate in them. Bangladesh Air Force personnel deployed on UN peacekeeping missions are subject simultaneously to the authority of the UN mission command, to the Bangladesh Air Force's disciplinary and command authority, and to the laws of the host state to the extent applicable. The interaction of these overlapping legal frameworks creates questions of jurisdiction, applicable law, and applicable standards of conduct that are not always clearly resolved in the existing framework.

CHAPTER THIRTY: LEAVE, WELFARE, AND QUALITY OF LIFE: THE LAW OF TIME AND INSTITUTIONAL CARE

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30.1 The Right to Leave: Legal Framework and Philosophical Foundations

Leave entitlements in the Bangladesh Air Force are both a legal right and a matter of operational policy, and the tension between these two dimensions of leave is one of the recurring sources of friction in the administration of service conditions. Legally, leave entitlements are established by the applicable regulations and are enforceable in principle as administrative rights. Operationally, the grant of leave is subject to the requirements of the service, and an officer or airman who is denied leave when it is operationally necessary to do so has no legal remedy comparable to what would be available to a civilian employee.

The philosophical foundation of the right to leave in military service is grounded in the recognition that even those who serve in a total institution, where the boundaries between professional and personal life are largely dissolved by the demands of the institution, retain their humanity and require time for rest, recreation, family life, and personal renewal. The recognition of this right in military law reflects the influence of the broader human rights framework on military jurisprudence: the right to rest and leisure, including reasonable limitation of working hours and periodic holidays with pay, is guaranteed by Article 24 of the Universal Declaration of Human Rights and is reflected in the International Covenant on Economic, Social and Cultural Rights.

The specific leave entitlements applicable to Bangladesh Air Force personnel are established in the applicable Air Force Regulations and administrative instructions. Officers are typically entitled to annual leave, casual leave, medical leave, maternity leave for female officers, and leave preparatory to retirement. The entitlement to each type of leave, the conditions for its grant, and the consequences of its refusal are prescribed in the relevant regulations, and compliance with those regulations is a matter of administrative law.

Annual leave is the most significant leave entitlement in terms of its welfare dimensions. The specific number of annual leave days to which an officer or airman is entitled reflects a policy judgment about the balance between the operational requirements of the service and the welfare needs of its personnel. The trend in democratic military establishments worldwide has been toward more generous leave entitlements and more flexible leave arrangements that better accommodate the family and personal circumstances of service personnel. In the United States, the FY2025 National Defense Authorization Act, signed in December 2024, included provisions improving the leave arrangements of military personnel with family caregiving responsibilities, reflecting a recognition that the welfare needs of modern service members include, prominently, the need to fulfill family obligations that have traditionally been undervalued in military leave frameworks designed primarily with male breadwinners in mind.

30.2 Medical Care and Health Entitlements: The Legal Obligation of Institutional Care

The Bangladesh Air Force has a comprehensive system of medical care for its personnel and their families, provided through the network of Air Force hospitals and medical facilities under the command of the Directorate of Medical Services of the Bangladesh Air Force. The legal framework governing the entitlement to medical care is an important dimension of service

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conditions law, and the adequacy of the medical care provided has direct implications for the operational effectiveness of the force as well as for the welfare of individual personnel.

The legal basis of the entitlement to medical care in the Bangladesh Air Force derives from the general principle that the state owes a duty of care to those it places in the hazardous conditions of military service. This principle, embedded in the regulations and customs of military service across all jurisdictions, is that the service member's obligation to risk his or her health and life in the service of the state is reciprocated by the state's obligation to provide medical care when that health is damaged in the performance of duty. The practical expression of this obligation is the system of service hospitals, medical officers, and ancillary health services that form part of the institutional infrastructure of the Bangladesh Air Force.

The scope of the entitlement to medical care raises questions of some legal complexity. Is the entitlement limited to the treatment of injuries and illnesses that are directly caused by service, or does it extend to all medical conditions, regardless of their causation? The answer in Bangladesh, consistent with the general tradition of Commonwealth military law, is that the entitlement to medical care in service facilities extends to all medical conditions of the serving member, whether or not service-related, but that the availability of service medical care is subject to the operational requirements and capacity of the medical service. Retired personnel and the families of serving and retired personnel have more limited entitlements, typically defined by specific regulatory provisions rather than by a general principle.

Mental health care is an area of increasing legal and ethical significance in military service conditions. The high rates of post-traumatic stress disorder (PTSD), depression, anxiety, and other mental health conditions among military personnel who have served in operational theatres or in other high-stress military environments have generated significant pressure in democratic military establishments to recognise mental health care as a core entitlement of service, equivalent to physical medical care. The United States military's mental health care framework, including the provisions of the FY2025 NDAA relating to mental health support for service members and veterans, represents the most developed example of this approach in terms of both the comprehensiveness of the legal framework and the institutional resources committed to its implementation.

For the Bangladesh Air Force, the integration of mental health care into the service conditions framework is an area that has received less systematic legal attention than physical medical care, despite the significant evidence that operational deployments on UN peacekeeping missions, the stress of aviation duties, and the institutional culture of the Bangladesh Air Force expose personnel to significant mental health risks. The development of a comprehensive legal framework for mental health care in the Bangladesh Air Force, grounded in the constitutional principle of the right to health and informed by international standards of mental health care in military contexts, is an important component of the reform agenda that this handbook advocates.

The jurisprudential issue of the relationship between mental health care entitlements and the stigma that attaches to mental health conditions in many military cultures is a particularly challenging one. If an officer knows that seeking mental health care will result in adverse consequences for his or her career, whether through the loss of a security clearance, a negative

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assessment in the annual confidential report, or informal stigmatisation by peers and superiors, then the formal entitlement to mental health care is largely illusory: the formal right exists but cannot be practically exercised without unacceptable personal cost. The development of a legal framework that genuinely protects the career interests of personnel who seek mental health care is therefore an essential complement to the provision of mental health services.

30.3 Accommodation: Government Housing, Allowances, and the Law of Military Housing

The provision of accommodation is one of the most practically important dimensions of military service conditions. Military service frequently requires personnel to live at or near their place of duty, to move to new postings at the direction of the service authority, and to maintain a standard of accommodation that is consistent with the professional standing of the service. The legal framework governing accommodation entitlements in the Bangladesh Air Force is therefore a matter of considerable practical significance.

Bangladesh Air Force bases and stations maintain residential accommodation for officers and airmen, typically arranged according to rank in a hierarchical system that reflects the institutional structure of the service. Officers' messes and residences are maintained to standards that provide for the institutional and social functions of the officers' mess as well as the private residential needs of individual officers. Airmen are typically accommodated in barracks at the station or, for married personnel, in residential quarters on or near the base.

The legal entitlement to accommodation is established by the applicable regulations, which specify the type and standard of accommodation to which officers and airmen of different ranks are entitled. The allocation of specific quarters is typically a matter of administrative management by the station administration, and disputes about the allocation of quarters are addressed through the internal administrative channels of the service rather than through external courts, at least in the first instance.

The constitutional dimensions of accommodation law in military service are more complex than they might initially appear. The state's provision of accommodation in lieu of the civilian housing that service personnel would otherwise need to rent or purchase represents a significant component of the total compensation package, and any change in the accommodation entitlement that reduces its value has financial consequences comparable to a reduction in pay. When the state wishes to reduce the accommodation entitlement of service personnel, for example by requiring officers to pay higher contributions for the occupation of service quarters, or by reducing the standard of quarters available to particular ranks, the question arises whether this constitutes a change in service conditions that requires legislative authority or ministerial order, and whether it gives rise to claims based on legitimate expectation or constitutional guarantees.

The comparative experience of the United Kingdom is instructive on this point. The UK Ministry of Defence's reform of the service family accommodation (SFA) system and the single living accommodation (SLA) system has been a source of persistent controversy over many years, with service personnel arguing that the standards of accommodation provided are inadequate and that charges for service accommodation are disproportionate relative to the quality and location of what is provided. The Armed Forces' Pay Review Body (AFPRB) has noted these concerns in

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successive annual reports, and the UK government has responded with various reform initiatives, including the Future Accommodation Model (FAM) announced in 2022 and revised in 2024, which seeks to provide more flexible accommodation arrangements that better suit the diverse needs of modern service personnel and their families. The reform process has illustrated the difficulty of simultaneously improving accommodation standards, controlling costs, and maintaining the institutional framework of the military community that concentrated residential accommodation helps to sustain.

For Bangladesh, the accommodation challenge is shaped by the specific geographical and economic context of the country. The rapid urbanisation of Bangladesh, the high cost of residential property in Dhaka and other major cities, and the diverse postings that air force officers receive throughout their careers create a complex pattern of accommodation needs that the existing regulatory framework does not always accommodate adequately. The legal reform agenda in this area should include a comprehensive review of the regulatory provisions governing accommodation entitlements, with a view to ensuring that those provisions reflect contemporary standards of housing adequacy and are grounded in a transparent and legally enforceable framework rather than in the administrative discretion that has historically governed accommodation allocation.

30.4 Welfare Facilities and Quality of Life: Legal Basis and Constitutional Significance

Beyond pay, allowances, medical care, and accommodation, the service conditions framework of the Bangladesh Air Force includes a range of welfare facilities and quality of life provisions that contribute to the overall attractiveness and humanity of military service. These provisions, which include educational facilities for the children of service personnel, sports and recreational facilities, canteen and mess facilities, religious and chaplaincy services, and support for the families of deployed or deceased personnel, are not merely administrative conveniences. They are, in important respects, components of the legal and constitutional relationship between the state and those who serve in the air force.

The legal basis of welfare facilities in the Bangladesh Air Force derives partly from specific legislative and regulatory provisions and partly from the general principle that the state owes a duty of care to those it places in the exceptional conditions of military service. The Air Force Regulations and administrative instructions establish various welfare funds, mess funds, and welfare committees through which welfare facilities are financed and administered. The management of these facilities, and the legal framework within which they operate, is an area that deserves more careful attention than it typically receives in the academic literature on military law.

The education of service children is a welfare dimension of particular social and constitutional significance. The children of Bangladesh Air Force officers and airmen, who move frequently with their parents to new posting stations, face distinctive educational challenges that arise directly from the conditions of military service. The provision of educational facilities at military stations, and the reservation of places in suitable schools for service children, are aspects of the welfare infrastructure that have significant human rights dimensions: the right to education, guaranteed by Article 17 of the Bangladesh Constitution and by international human rights

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standards, applies to the children of service personnel just as it does to other children, and the disruption of their education caused by parental postings is a harm that the state has some obligation to mitigate.

CHAPTER THIRTY-ONE: PENSION AND POST-SERVICE BENEFITS: THE LAW OF DEFERRED COMPENSATION AND INSTITUTIONAL OBLIGATION

31.1 The Theory of Military Pensions: Deferred Compensation, Social Insurance, and Moral Debt

The pension entitlements of Bangladesh Air Force personnel are among the most legally and philosophically significant components of the service conditions framework. A pension is not merely a financial product: it is the material expression of the state's long-term obligation to those who have devoted their working years to national service, often at significant personal cost. The legal framework governing military pensions must therefore be understood in light of the theory of what a pension is and what obligations the state incurs by promising one.

There are, broadly speaking, three theoretical accounts of the nature of military pensions, each of which has different implications for the legal framework within which pension entitlements are established and enforced. The first is the deferred compensation theory: the pension is simply a component of the total compensation for military service that is deferred until the end of service, functioning like a forced savings scheme in which the state makes contributions on behalf of the service member and the service member receives the accumulated value at retirement. On this view, the pension is a legal entitlement arising from the employment relationship, and any modification of the pension entitlement that reduces what was promised when the service member entered service is a form of breach of that relationship.

The second theory is the social insurance theory: the pension is a form of insurance against the risks of old age and incapacity that the service member, by virtue of the nature of military service, is particularly exposed to. Military service may shorten life expectancy, cause long-term health damage, limit the development of civilian occupational skills, and otherwise increase the service member's vulnerability in the post-service period. The pension, on this view, is compensation for these risks, and its adequacy is measured by whether it provides genuine security against the distinctive vulnerabilities that military service creates.

The third theory is the moral debt theory: the pension is an expression of the state's moral debt to those who have served it, a debt that arises not from contract or from social insurance but from the sui generis moral significance of military service. Those who have devoted their lives to the defence of the nation have earned a claim that goes beyond what would be justified by purely economic analysis, and the pension is one of the ways in which the state discharges this moral obligation. On this view, the adequacy of the pension is measured not merely by its market value but by whether it represents an appropriate expression of the state's recognition of the service member's sacrifice.

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These three theories are not mutually exclusive, and a comprehensive account of military pensions will draw on elements of all three. But the relative emphasis given to each theory has practical implications for the legal framework. If the deferred compensation theory is primary, then pension entitlements should be treated as legally binding commitments from the moment they are created, not subject to unilateral modification by the state. If the social insurance theory is primary, then the adequacy of the pension should be assessed against a standard of genuine security for the post-service period, and the design of the pension system should reflect the distinctive risks of military service. If the moral debt theory is primary, then the adequacy of the pension is in part a matter of social and political recognition that cannot be fully captured by purely financial analysis.

31.2 The Statutory Framework of Military Pensions in Bangladesh: Air Force Act Provisions and Regulatory Implementation

The Air Force Act of 1953 does not contain detailed provisions establishing specific pension entitlements. Like the pay framework, the pension framework is established through subordinate legislation, regulations, and executive orders rather than directly in the primary statute. The Act provides the legal authority for the pension system, and the specific terms of pension entitlements are established through the Pension Regulations applicable to the Bangladesh Air Force and the related financial regulations and orders of the Ministry of Defence and the Ministry of Finance.

The basic structure of the Bangladesh Air Force pension system follows the general pattern of public sector pension arrangements in Bangladesh, adapted to reflect the distinctive features of military service. Officers and airmen who complete the qualifying period of service are entitled to a pension calculated as a proportion of their last drawn pay, with the proportion increasing with the length of service. The minimum qualifying period for pension entitlement, the rates of pension applicable to different lengths of service and different ranks, and the provisions for family pensions payable to the dependants of deceased service members are all established in the applicable regulations.

One of the most legally significant features of the Bangladesh military pension system is the connection between disciplinary status and pension entitlement. The Air Force Act provides for the forfeiture of pension rights in certain circumstances, including dismissal from service following a court martial finding of guilt for certain serious offences. The power to forfeit pension rights, even in the most serious cases, raises constitutional questions that deserve careful attention. The pension is, as the preceding analysis has argued, not merely a gratuity but an entitlement accumulated through years of service. The forfeiture of that entitlement as a consequence of a disciplinary finding represents a confiscation of an accumulated legal right that requires strong justification, particularly where the conduct that gave rise to the disciplinary finding occurred during service and was therefore not the kind of post-retirement conduct that could justify depriving a retiree of benefits already earned.

The constitutional challenge to the forfeiture of pension rights was addressed in the Indian Supreme Court in a series of landmark decisions, most notably State of Jharkhand v Jitendra Kumar Srivastava, decided in 2013, which held that pension cannot be withheld as a punishment

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for a disciplinary offence without specific legislative authority, and that the general principle is that a person who has earned pension rights through years of service has a vested right to those rights that cannot be defeated by executive action. While this decision applies to civil servants rather than military personnel, and while Indian law is not directly binding in Bangladesh, the reasoning is persuasive and applicable in the Bangladesh constitutional context.

31.3 Disability Pension and Service-Related Injury Compensation: Legal Framework

The provision of adequate financial compensation for service personnel who are injured or disabled in the performance of their duties is one of the most morally significant dimensions of the service conditions framework. When an air force officer or airman suffers a disability as a consequence of service, whether through an aircraft accident, exposure to occupational hazards, or injury during military operations, the state's obligation to provide adequate compensation for that disability is not merely a matter of administrative policy but of basic justice.

The framework of disability pension and injury compensation in the Bangladesh Air Force is established through the applicable regulations, which typically provide for enhanced pension rates for personnel who are discharged from service as a consequence of disabilities attributable to service. The legal standard for attribution of a disability to service, that is, the standard that must be met to establish that a disability is sufficiently connected to service to give rise to the enhanced compensation entitlement, is a matter of considerable practical importance and some legal complexity.

The traditional standard for attribution of disability to service has been the requirement that the disability be attributable to, or aggravated by, service. This formulation requires a causal connection between the service and the disability, but the precise degree of causation required and the evidentiary standard that must be met to establish it have been the subject of significant litigation in comparable jurisdictions. The tendency in progressive military law systems has been to move toward a presumption in favour of attribution to service when the disability is of a kind that is commonly caused or exacerbated by service conditions, with the burden of rebuttal resting on the state rather than on the injured service member.

Aviation accidents are a particularly significant category of service-related injury in the context of Bangladesh Air Force personnel. The Bangladesh Air Force has experienced a number of fatal aircraft accidents in recent years, including the Yak-130 crash of May 2024 and the J-7 crash of July 2025, both of which resulted in the deaths of pilot officers and raised questions about aviation safety management, equipment maintenance, and the legal framework governing the investigation of such accidents and the compensation of the families of the deceased pilots. The legal framework for the investigation of such accidents and the compensation of the families of those killed in the performance of their duties is addressed in detail in Chapter Thirty-Three of this Part.

31.4 Family Pensions: Legal Framework and Social Significance

The families of Bangladesh Air Force personnel who die in service or from service-related causes are entitled to family pensions, which represent the state's recognition of the sacrifices of

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the families of those who serve. The legal framework governing family pensions is established in the applicable pension regulations, which specify the conditions for entitlement, the rates of family pension payable to spouses and dependent children, and the duration of the entitlement.

Family pensions raise a number of important legal questions that reflect broader debates about the nature of military service and the state's obligations to those who sacrifice most directly in its service. The question of the duration of the widow's pension, and in particular whether it should be terminated on remarriage, is one that has been the subject of significant legal and social debate in Bangladesh and comparable jurisdictions. The traditional rule, which terminated the widow's pension on remarriage, was justified on the ground that remarriage meant that the widow was no longer without the support that the pension was designed to provide. Critics of this rule argued that it discouraged remarriage, penalised widows for making decisions about their own lives, and reflected a paternalistic and outdated conception of the relationship between widowhood and financial need.

The constitutional challenge to the remarriage termination rule was addressed by the Supreme Court of India in a landmark decision in the context of civil service family pensions, and the rule was held to be unconstitutional as a violation of the right to equality and the right to live with dignity. The subsequent legislative and regulatory reform in India abolished the remarriage termination rule for most categories of government servants. In Bangladesh, the constitutional analysis points in the same direction: a rule that terminates a widow's pension upon remarriage, without taking into account her actual financial circumstances after remarriage, is difficult to justify as consistent with the constitutional guarantees of equal treatment and personal liberty.

The legal position of cohabiting partners of deceased service members, who are not legally married but who have maintained a stable, committed relationship with the service member, is another area of significant legal development in comparable jurisdictions. The United Kingdom, the United States, Canada, and Australia have all progressively extended the recognition of de facto relationships in the context of military family entitlements, reflecting the broader social and legal recognition of the diversity of family arrangements in contemporary society. In Bangladesh, the application of family pension provisions to cohabiting partners raises both legal and cultural questions that the existing regulatory framework does not clearly address.

31.5 The Post-Service Period: Resettlement, Retraining, and the Duty of Institutional Continuity

The legal framework of service conditions does not end at retirement. The Bangladesh Air Force's obligations to its retired personnel, and the rights that retired personnel retain in relation to the institution that formed them, are aspects of the law of service conditions that are increasingly recognised as significant in both practical and philosophical terms.

Resettlement support, meaning the provision of assistance to retiring personnel in transitioning to civilian employment, is an area of growing legal and policy significance in military establishments worldwide. The recognition that military service creates distinctive skills, disciplines, and experiences that are of value to civilian employers is only half of the picture: the other half is the recognition that military service also creates distinctive gaps in civilian

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occupational experience and professional credentialing that may put retiring service members at a disadvantage in the civilian labour market relative to peers who have spent equivalent years in civilian careers. The state's obligation to mitigate these disadvantages through resettlement support is grounded both in the deferred compensation theory of military service and in the moral debt theory discussed earlier in this chapter.

The Bangladesh Air Force, like other branches of the Bangladesh armed forces, provides some resettlement assistance to retiring personnel, including access to career transition counselling, assistance with the recognition of military qualifications in the civilian context, and in some cases, educational grants or retraining opportunities. The legal framework governing these provisions is established in administrative instructions rather than in primary legislation, and their adequacy relative to the needs of retiring personnel is an area that would benefit from systematic review and legislative reinforcement.

The comparative experience of the United Kingdom is instructive in this regard. The Career Transition Partnership (CTP), a public-private partnership established by the UK Ministry of Defence to support the resettlement of retiring service personnel, has been evaluated and reformed on multiple occasions, most recently in 2023 and 2024, and its continued operation represents a legally grounded institutional commitment to the post-service welfare of military personnel that has no direct equivalent in the Bangladesh context. The legal foundation of the CTP in specific ministerial commitments and regulatory frameworks, rather than in mere administrative practice, provides a model for how Bangladesh might strengthen its own resettlement support framework.

CHAPTER THIRTY-TWO: OCCUPATIONAL HEALTH, SAFETY, AND THE LAW OF MILITARY HAZARDS

32.1 The Concept of Military Occupational Health and Safety: Theoretical Foundations

Occupational health and safety in the military context is an area that sits at the intersection of service conditions law, administrative law, and the general law of negligence, and it raises philosophical questions about the distinctive character of military service that do not arise in ordinary employment law. The fundamental tension is this: military service is, by its very nature, an occupation that involves hazard. The training for war, and war itself, expose service personnel to risks that no regulatory framework, however well designed, can entirely eliminate. The question is not whether there will be risks in military service but what risks are inherent in the nature of military service and what risks represent a failure of the institutional duty of care.

The distinction between inherent risk and institutional negligence is not always easy to draw in practice, but it is conceptually important. An air force pilot who is killed in combat is exposed to a risk that is inherent in combat aviation and that cannot be eliminated without eliminating the operational function of the air force. An air force pilot who is killed because the aircraft he or she was flying had a known airworthiness defect that was not repaired due to administrative neglect, or because the training he or she received was inadequate due to resource constraints, or because

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the maintenance procedures that should have been followed were not followed due to institutional culture or supervision failures, has been exposed not to inherent military risk but to institutional negligence for which the state should be legally accountable.

The development of a coherent legal framework for military occupational health and safety that respects the inherent risk of military service while holding the institution accountable for preventable harm is one of the most important challenges in contemporary military law. This framework must address the special position of aviation safety in the air force context, where the complexity of the operational environment, the sophistication of the equipment, and the multiple organisational factors that interact in the causation of accidents make the distinction between inherent risk and preventable harm particularly difficult to draw.

32.2 Aviation Safety Law: ICAO Standards, National Implementation, and the Bangladesh Air Force

International civil aviation is governed by a comprehensive international legal framework established by the International Civil Aviation Organization (ICAO), a specialised agency of the United Nations, under the Convention on International Civil Aviation (the Chicago Convention) of 1944. The ICAO Standards and Recommended Practices (SARPs), contained in the Annexes to the Chicago Convention, establish detailed technical standards for aviation safety, including standards for aircraft airworthiness, pilot licensing and currency, air traffic control, accident investigation, safety management systems, and a wide range of other operational matters.

Military aviation is not directly subject to ICAO regulations in the same way as civil aviation, but the standards established by ICAO represent a global benchmark of aviation safety that is widely adopted as the baseline for military aviation safety frameworks as well. The Bangladesh Civil Aviation Authority (BCAA) implements ICAO standards for civil aviation in Bangladesh, but the regulatory framework for military aviation safety is a matter for the Bangladesh Air Force itself, subject to broader oversight by the Ministry of Defence and the Government.

The International Civil Aviation Organization's Safety Management Manual (Doc 9859), now in its fourth edition published in 2018 and updated with guidance material through 2024, establishes the framework of Safety Management Systems (SMS) that ICAO requires all aviation service providers to implement. An SMS is a systematic, proactive approach to managing safety risks that requires the identification and assessment of hazards, the implementation of risk controls, the monitoring of safety performance, and the continuous improvement of safety practices based on operational experience. The application of SMS principles to military aviation, including the identification and reporting of safety hazards without the fear that such reporting will result in disciplinary consequences for the reporter, is an area of ongoing development in military aviation safety management worldwide.

The Bangladesh Air Force has established its own aviation safety framework, which incorporates elements of the ICAO SMS approach adapted to the military aviation context. The legal questions that arise in connection with this framework include: the extent to which the Air Force safety authority is independent of the operational chain of command; the protections available to personnel who report safety concerns in good faith; the relationship between the safety

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investigation of accidents and the disciplinary investigation of the same events; and the legal obligations of the Air Force to share safety information with the BCAA and with the international aviation safety community.

Part Eight of this handbook addressed the relationship between safety investigations and disciplinary investigations in the context of the discussion of military investigations. The fundamental principle established in that discussion, that safety investigations must be kept separate from disciplinary proceedings and that information provided voluntarily for safety purposes must not be used in subsequent disciplinary or criminal proceedings, deserves re-emphasis in the specific context of aviation safety law. The effective functioning of an aviation safety reporting system depends on the confidence of personnel that they can report safety concerns and incidents without fear of disciplinary consequences, and this confidence cannot exist if the safety reporting system is not effectively insulated from the disciplinary system.

The two recent fatal accidents involving Bangladesh Air Force aircraft, the Yak-130 crash of May 9, 2024, and the J-7 crash of July 21, 2025, both of which resulted in the deaths of pilot officers, raise questions about the adequacy of the Bangladesh Air Force's aviation safety management framework and the quality of the investigation process through which such accidents are analysed and their causes identified. Without prejudging the findings of the investigations into those specific accidents, which are matters of ongoing institutional inquiry, the general observation can be made that every fatal military aviation accident represents both a human tragedy and an institutional obligation: the obligation to investigate thoroughly, to identify the systemic as well as the immediate causes of the accident, to implement the corrective actions necessary to prevent recurrence, and to provide full and transparent accountability to the families of the deceased and to the public.

32.3 Chemical, Biological, and Environmental Hazards in Military Service: Legal Framework

Beyond the distinctive hazards of aviation, Bangladesh Air Force personnel may be exposed to a range of occupational health hazards arising from the nature of military service that are not specific to aviation. These include exposure to fuel and lubricant vapours in maintenance and ground support roles, exposure to electromagnetic radiation in communications and radar-related work, exposure to noise from aircraft engines and weapons systems, exposure to solvents and chemicals used in aircraft maintenance, and the occupational health risks associated with prolonged sedentary work in the increasingly computer-intensive environment of modern air force operations.

The legal framework governing the employer's duty of care in relation to these occupational health hazards is, in the Bangladesh context, only partially developed. The Bangladesh Labour Act, 2006, which establishes the main legal framework for occupational health and safety in civilian employment, does not directly apply to military personnel, who are subject to the Air Force Act and the regulations made thereunder rather than to civilian employment legislation. The Air Force Act itself does not contain detailed occupational health and safety provisions, and the relevant regulatory framework is established primarily through administrative instructions and standing orders rather than through legislation.

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This gap in the formal legal framework means that the legal basis for the Bangladesh Air Force's occupational health and safety obligations is somewhat unclear. The most coherent legal analysis treats those obligations as arising from the general duty of care that the state owes to those it places in hazardous conditions of service, from the constitutional principle of the right to life and personal liberty under Article 32, and from the human rights obligations that Bangladesh has accepted under international law. These obligations are not merely prospective, relating to the prevention of future harm, but also remedial, requiring adequate compensation when harm has already been suffered.

32.4 Mental Health Occupational Hazards: PTSD, Burnout, and the Duty of Institutional Care

Among the occupational health hazards of modern military service, mental health hazards deserve particular attention because they have historically been underrecognised, inadequately addressed, and surrounded by an institutional culture of denial and stigma that has compounded the harm suffered by affected individuals. The legal framework for mental health as an occupational health hazard in military service is therefore an area of particular reform urgency.

Post-traumatic stress disorder (PTSD), recognised by the international medical community as a well-established clinical condition that can result from exposure to traumatic events, is a significant occupational health risk for Bangladesh Air Force personnel who serve in operational theatres, respond to aviation accidents, or are exposed to other traumatic events in the course of their duties. The institutional reluctance to acknowledge PTSD as a service-related condition, and the tendency to attribute mental health problems to personal weakness rather than to the cumulative impact of institutional stressors, has resulted in many affected personnel being denied the medical care and disability compensation to which their service-related conditions entitle them.

The legal framework for the recognition of PTSD and other occupational mental health conditions as service-related disabilities is established in the applicable pension and disability regulations, but its application depends on the institutional willingness to attribute these conditions to service and on the availability of qualified mental health professionals to diagnose and treat them within the military medical system. The reform of this framework, both to ensure that mental health conditions are treated with the same legal seriousness as physical disabilities and to ensure that the institutional culture of the Bangladesh Air Force does not prevent affected personnel from seeking the care to which they are entitled, is a priority area of service conditions law reform.

CHAPTER THIRTY-THREE: THE LAW OF SERVICE INJURIES AND DEATHS: INVESTIGATION, COMPENSATION, AND INSTITUTIONAL ACCOUNTABILITY

33.1 The Legal Framework for Investigating Service Injuries and Deaths

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When a member of the Bangladesh Air Force is injured or killed in the performance of service, the law imposes a series of obligations on the institution: the obligation to investigate the circumstances of the injury or death, the obligation to determine whether the injury or death was service-related for purposes of the applicable compensation framework, the obligation to provide appropriate compensation to the injured person or the dependants of the deceased, and the obligation to take the corrective action necessary to prevent recurrence of similar events.

These obligations are not merely administrative. They are legally grounded in the Air Force Act, in the applicable regulations and pension provisions, and in the constitutional principles that inform the state's duty of care to those it calls into service. The failure to fulfil any of these obligations is potentially actionable, and the courts have jurisdiction to review the adequacy of investigations, the correctness of attribution decisions, and the appropriateness of the compensation provided.

The investigation of a service death typically involves several parallel or sequential processes. The operational investigation, conducted by the relevant military authority, seeks to determine the immediate cause of the death and the circumstances surrounding it. The aviation accident investigation, in the case of deaths resulting from aircraft accidents, is conducted by the Air Force's aviation safety authority with the technical assistance of relevant engineering and medical expertise. The administrative investigation, conducted by the appropriate commanding officer or a board of inquiry convened for the purpose, seeks to determine the facts of the case and to make recommendations about disciplinary or administrative action if warranted. The police investigation, which may be conducted in parallel in the case of deaths that may involve criminal conduct, involves the civil criminal justice system and is subject to the ordinary rules of criminal procedure.

The relationship between these multiple investigation processes, and the rules governing the use of information obtained in one process in the context of another, are matters of considerable legal complexity. As Part Eight of this handbook emphasised, the information voluntarily provided in a safety investigation must be protected from use in subsequent disciplinary or criminal proceedings if the safety investigation system is to function effectively. But this principle must be balanced against the interests of justice in cases where the safety investigation reveals conduct that is criminally culpable.

33.2 The Board of Inquiry: Legal Procedures, Evidentiary Framework, and Limitations

The Board of Inquiry is the primary formal mechanism through which the Bangladesh Air Force investigates significant incidents and fatalities. A Board of Inquiry is typically convened by the appropriate military authority, consists of officers senior to the persons whose conduct may be at issue, and has the power to examine witnesses, require the production of documents, and make findings of fact and recommendations.

The legal framework governing the Board of Inquiry is established primarily in the Air Force Act, the applicable Air Force Regulations, and the administrative instructions governing the conduct of inquiries. The Board's procedures are designed to be thorough and fair, but they

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operate within a framework that has certain limitations from the perspective of contemporary standards of procedural justice.

One significant limitation is that the Board of Inquiry is an internal military process, conducted by officers of the air force who are themselves subject to the command authority of the officer who convened the inquiry. This structural feature creates potential for institutional bias: the officers conducting the inquiry may feel pressure, whether explicit or implicit, to reach findings that do not embarrass the institution or implicate senior officers. The independence of the inquiry process from the operational chain of command is therefore a matter of concern, particularly in cases involving significant institutional failures.

A second limitation is the evidentiary framework within which the Board of Inquiry operates. The Board is not a court and does not apply the rules of evidence applicable in criminal proceedings. This means that it has considerable flexibility in the material it considers, but it also means that the persons whose conduct is at issue have more limited rights to challenge the evidence against them than they would have in a criminal or disciplinary proceeding. The admissibility of hearsay evidence, the absence of a right to cross-examine witnesses, and the limited right of the person under inquiry to have legal representation in the proceedings are all aspects of the existing framework that give rise to legitimate procedural concerns.

The reform of the Board of Inquiry process, to ensure greater procedural fairness, greater independence from the command hierarchy, and greater transparency of findings and recommendations, is an important component of the broader reform agenda for Bangladesh Air Force service conditions law. The comparative experience of the United Kingdom, where the coroner's inquest provides an independent civilian mechanism for investigating service deaths that operates alongside the military Board of Inquiry and that has jurisdiction to examine the systemic causes of service deaths including failures of equipment, training, and supervision, offers a model for how independent investigation of service deaths can complement the internal military investigation process.

33.3 Compensation for Service Deaths: Legal Entitlements and Families' Rights

The families of Bangladesh Air Force personnel who die in service are entitled to a range of financial entitlements that represent the state's recognition of the sacrifice of the deceased and the institutional obligation to provide for those he or she has left behind. These entitlements include the family pension discussed in Chapter Thirty-One, a death gratuity payable as a lump sum immediately following the death, and, where the death was service-related, enhanced compensation reflecting the exceptional nature of the sacrifice.

The legal framework governing the compensation payable to the families of service personnel who die in aviation accidents is established in the applicable pension regulations and the orders of the Ministry of Defence. The distinction between deaths attributable to service and deaths not so attributable is critical for the calculation of the appropriate level of compensation, and the determination of attributability is a matter on which disputes frequently arise between the families of the deceased and the military administration.

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In cases of aviation accidents resulting in the death of aircrew, the presumption should be that the death is attributable to service unless there is clear evidence that the death resulted from purely personal conduct unrelated to the performance of duty. The tendency of military administrations in some cases to attribute accidents to pilot error, and thereby to avoid the obligation to pay enhanced service-related death benefits, without adequate investigation of the systemic and institutional factors that may have contributed to the accident, is a pattern that has been documented in multiple jurisdictions and represents a significant failure of institutional accountability.

The legal rights of the families of deceased service personnel in relation to the investigation of the circumstances of the death deserve specific attention. The right to know how a loved one died, and why, is increasingly recognised in international human rights law as a component of the broader right to truth and accountability that attaches to cases of state-related death. The European Court of Human Rights has consistently held that the state has a positive obligation under the right to life to conduct an effective investigation into deaths for which state agents bear responsibility, and this obligation extends to the provision of adequate information to the families of the deceased.

In the Bangladesh context, the families of air force personnel who die in aircraft accidents have a legitimate claim to be provided with timely, accurate, and complete information about the findings of the accident investigation, including the immediate and systemic causes of the accident and the corrective actions taken in response. The institutional tendency to treat accident investigation findings as confidential internal matters, not to be shared with the families of the deceased or with the public, is not merely ethically questionable but potentially legally indefensible in light of the constitutional principle of the right to information and the broader human rights framework.

33.4 Line of Duty Determinations: Legal Standards and Review

The determination of whether an injury or death occurred in the line of duty is a threshold decision that determines the level and type of compensation to which the affected individual or their family is entitled. This determination is made by the appropriate military authority under the applicable regulations, and its correctness is subject to review through the internal military appeal mechanisms and, ultimately, through judicial review in the civil courts.

The legal standard for a line of duty determination involves the assessment of whether the injury or death was service-related, meaning whether it occurred during the performance of duty or was causally connected to the conditions of service in a way that meets the applicable legal standard. The determination of what constitutes the performance of duty for these purposes is not always straightforward. An officer who is injured while travelling to his place of duty, or who suffers a heart attack at his desk during working hours, or who develops a serious illness that is attributable in part to the stress of service, presents cases that may not obviously fall within the simplest definition of line of duty but that may well be service-related in the broader sense.

The review of line of duty determinations by the civil courts is an important safeguard against institutional self-interest in the administration of military compensation. The courts have

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jurisdiction to review the factual basis of such determinations, the adequacy of the investigation on which they are based, and their compliance with the applicable legal standards. The availability of effective judicial review is particularly important in cases where the military administration has a financial or institutional interest in finding that the injury or death was not service-related, since such findings reduce the state's compensation liability.

CHAPTER THIRTY-FOUR: ADMINISTRATIVE SEPARATION, DISCHARGE, AND THE LAW OF TERMINATION OF SERVICE

34.1 The Modes of Separation from Service: Legal Categories and Consequences

The termination of a member's relationship with the Bangladesh Air Force can occur in a number of different ways, each with distinct legal consequences for the separating individual. The principal modes of separation are: retirement at the applicable retirement age or after completion of the prescribed minimum service period; discharge at the discretion of the appropriate authority, including voluntary discharge on personal request; release for medical unfitness; release on compassionate grounds; retirement as a consequence of the findings of a Promotion Selection Board; dismissal following a court martial finding; removal from service by administrative order; and death in service or otherwise.

The legal consequences of each mode of separation are different, and the differences are significant. Retirement at the prescribed age or after the completion of minimum service entitles the officer or airman to the full pension and post-service benefits to which his or her rank and service record entitle him or her. Dismissal following a court martial finding for a serious offence may result in the forfeiture of pension rights, as discussed earlier. Discharge for medical unfitness entitles the discharged person to the applicable disability benefits if the unfitness is service-related, but not to the full retirement pension if the service has not been completed. The precise legal consequences of each mode of separation, and the procedural framework within which the separation is effected, are matters of considerable practical importance to the individuals affected.

34.2 Voluntary Discharge: Rights and Limitations

The right of an officer or airman to resign from or otherwise voluntarily leave the service is significantly more restricted than the right of a civilian employee to terminate his or her employment. Military service creates an obligation of continued service for the prescribed period that can only be terminated by voluntary discharge in circumstances and through procedures established by the applicable regulations, and the regulation of this right of exit is one of the distinctive features of the military employment relationship.

An officer seeking voluntary discharge must apply to the appropriate authority and await the approval of that application. The authority has discretion to approve or refuse the application, taking into account the operational requirements of the service and the particular circumstances of the officer's case. In general, voluntary discharge applications are more readily granted when

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the officer has completed a substantial proportion of his or her service commitment and less readily granted when the discharge would deprive the service of a scarce operational capability at a critical time.

The constitutional question raised by the restricted right of exit is whether the obligation to continue service against one's will constitutes a form of involuntary servitude that is incompatible with the constitutional right to freedom from forced labour. The answer, consistently given by courts in comparable jurisdictions, is that the voluntary assumption of a service commitment, with full knowledge of its binding character, does not give rise to a constitutional right to unilateral exit at will, but that the obligation to serve cannot be used to subject an individual to conditions of service that are fundamentally incompatible with his or her dignity and constitutional rights. The refusal to grant voluntary discharge when an individual's continued service would subject him or her to conditions that violate constitutional rights is a different matter from the ordinary refusal of a voluntary discharge application on operational grounds, and the former would be subject to constitutional challenge.

34.3 Medical Discharge and the Interface Between Health Law and Service Conditions

The discharge of an officer or airman on grounds of medical unfitness is one of the most legally complex areas of service conditions law, involving the interface between medical assessment procedures, military service requirements, the applicable pension and disability compensation framework, and the constitutional rights of the individual being discharged.

The determination of medical unfitness for continued air force service is made by the appropriate medical authority following an assessment by a Medical Board. The Medical Board's findings on fitness may be challenged by the individual concerned through the applicable review mechanisms, and the ultimate determination of whether the individual is fit or unfit for service is a matter of legal significance that affects both the individual's continued right to serve and the state's financial obligations in the event of discharge.

The constitutional dimensions of medical discharge include the right to a fair hearing before the determination of unfitness is made, the right to medical care that is adequate to address the condition giving rise to the potential unfitness before the discharge decision is taken, and the right to appropriate compensation in the event of discharge for a service-related medical condition. The failure to observe these procedural and substantive requirements in the administration of medical discharge procedures is a form of unlawful administrative action that is subject to challenge in the courts.

The interface between mental health conditions and medical discharge raises particularly sensitive issues. If an officer or airman who has developed a mental health condition as a consequence of service, including PTSD resulting from operational deployment or trauma experienced in the course of duty, is discharged on grounds of mental health unfitness without receiving adequate treatment, without being informed of the disability compensation to which his or her service-related condition entitles him or her, and without being given an opportunity to challenge the medical assessment, then the discharge process has violated both the procedural rights and the substantive welfare rights of the individual concerned.

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34.4 Retirement Age, Service Length, and the Principles Governing Mandatory Retirement

The mandatory retirement of officers at the applicable retirement age is a feature of military service conditions that distinguishes military employment from civilian employment in most respects. Civilian employment legislation in Bangladesh, as in comparable jurisdictions, prohibits age discrimination in employment after a certain degree, but military employment has historically been treated as a special case in which mandatory retirement ages are justified by the operational requirements of maintaining a force of adequate physical fitness and professional currency.

The justification for mandatory retirement ages in military aviation is particularly compelling, given the relationship between age and the physical capabilities required for aircrew duties. Pilot fatigue response, visual acuity, the ability to perform complex cognitive and physical tasks under high physiological stress, and the responsiveness to emergency situations are all capabilities that may be affected by ageing in ways that are directly relevant to aviation safety. The mandatory retirement of aircrew at ages that reflect the limits of safe performance of aviation duties is therefore justifiable on grounds that are not available in most civilian occupational contexts.

The legal question is whether the mandatory retirement age applicable to Bangladesh Air Force personnel is correctly calibrated, that is, whether it reflects genuine functional requirements rather than administrative convenience or the preferences of a particular generation of military leadership. The setting of retirement ages that are too low deprives the service of experienced personnel whose professional knowledge and institutional wisdom are valuable, and deprives the individuals concerned of the opportunity to continue a career they have devoted their lives to. The setting of retirement ages that are too high creates operational risks if physiological limitations associated with ageing are not adequately managed. The calibration of retirement age policy is therefore a matter of both institutional policy and individual right.

CHAPTER THIRTY-FIVE: THE CONSTITUTIONAL TRANSFORMATION OF SERVICE CONDITIONS: IMPLICATIONS OF THE 2024 REFORM PROCESS

35.1 The Monsoon Revolution and Its Institutional Implications

The political transformation of Bangladesh in the summer of 2024, which resulted in the departure of the Hasina government and the installation of an interim government under the leadership of Professor Muhammad Yunus, created an institutional context of significant uncertainty and opportunity for Bangladesh Air Force service conditions law. The interim government established a number of reform commissions, including the Constitution Reform Commission, whose work has direct implications for the constitutional framework within which service conditions law operates.

The revolution of July 2024, driven primarily by student-led protests against the quota system for government employment but expanding rapidly to encompass broader demands for accountability, constitutional reform, and an end to what protesters described as authoritarian

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governance, represents a pivotal moment in Bangladesh's constitutional history. For the Bangladesh Air Force, the revolution raised immediate questions about the institutional role of the armed forces in a period of political transition, questions that Part Seven of this handbook addressed in the context of civil-military relations law. But it also raised longer-term questions about the constitutional framework for service conditions, which are the subject of this chapter.

The Constitution Reform Commission has proposed several changes to the constitutional framework that would, if implemented, have significant implications for service conditions law. The most significant of these is the proposal to make socioeconomic rights directly justiciable. Under the existing Bangladesh Constitution, many of the provisions relating to social and economic rights, including the right to work, the right to adequate living standards, and the right to social security, are contained in Part II of the Constitution under the heading "Fundamental Principles of State Policy," which Article 8(2) states shall be a guide to the interpretation of the Constitution and the making of laws, but which are explicitly stated by Article 8(2) not to be judicially enforceable.

If socioeconomic rights were made directly justiciable, as the Constitution Reform Commission has proposed in its preliminary recommendations, then service personnel would potentially be able to enforce in court rights to adequate pay, adequate accommodation, adequate medical care, and adequate pension that are currently only indirectly accessible through the ordinary administrative law framework. This would represent a fundamental change in the legal character of service conditions entitlements, transforming them from administrative provisions subject to executive discretion into constitutional rights subject to judicial enforcement.

35.2 Socioeconomic Rights Justiciability: Comparative Experience and Implications for Military Service Conditions

The international experience with the direct justiciability of socioeconomic rights is extensive and instructive. South Africa, whose Constitution of 1996 includes directly justiciable provisions on the right to housing, the right to health care, the right to food and water, and the right to social security, has developed a significant body of constitutional jurisprudence on the application of these rights in the specific institutional contexts of government services and employment. The Constitutional Court of South Africa has consistently held that socioeconomic rights impose immediate obligations on the state to respect, protect, and progressively realise the rights in question, even though the precise content of what the progressive realisation obligation requires depends on the available resources and the context.

The application of a justiciable socioeconomic rights framework to military service conditions would create new legal mechanisms through which service personnel could challenge inadequate pay, inadequate medical care, inadequate accommodation, and inadequate pension provision as violations of their constitutional rights rather than merely as administrative improprieties. This would be a significant development in the legal character of military service conditions, and it would require a corresponding development in the capacity of the courts to engage with the complex institutional and financial questions that arise in the evaluation of what adequate service conditions require.

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At the same time, the justiciability of socioeconomic rights in the military context raises questions about the appropriate scope of judicial review of military service conditions that do not arise in the same way in civilian contexts. The court's ability to order the state to provide specific benefits, or to modify specific aspects of the service conditions framework, is limited by the constitutional principle of separation of powers, which requires the courts to respect the legislature's and executive's primary responsibility for decisions about the allocation of public resources. The development of a constitutional jurisprudence of socioeconomic rights in the military context will therefore need to navigate carefully between the imperative to provide effective legal protection for the legitimate entitlements of service personnel and the imperative to respect the institutional authority of the elected branches of government to make policy decisions about the structure and adequacy of military service conditions.

35.3 Gender Equality in Service Conditions: Constitutional Imperatives and Reform Agenda

The constitutional guarantee of gender equality, under Article 28 of the Bangladesh Constitution, has significant implications for service conditions law that are not always adequately recognised in the existing framework. Gender discrimination in service conditions, including differential pay, differential leave entitlements, differential access to promotion opportunities, and the imposition of conditions of service that disproportionately disadvantage female personnel without adequate justification, is constitutionally impermissible and gives rise to legal remedies.

The service conditions framework of the Bangladesh Air Force, like that of military establishments in comparable jurisdictions, was designed primarily with male service members in mind, and some of its provisions reflect the assumption that the typical air force member is a male breadwinner with a non-working spouse and dependent children. This assumption is increasingly at odds with the reality of contemporary air force service, in which female officers and airwomen constitute a growing proportion of the force and in which the household arrangements of service members are increasingly diverse.

The most significant areas in which gender-related reform is needed in Bangladesh Air Force service conditions law include maternity and paternity leave provisions, which should be adequate to meet the actual needs of service members with childcare responsibilities without creating career penalties for those who take such leave; the provision of childcare facilities at air force stations that support the operational requirements of service members with childcare responsibilities; the development of flexible service arrangements, including flexible working hours and part-time service options, that better accommodate the life circumstances of a diverse workforce without undermining operational effectiveness; and the reform of any provisions that treat female service members differently from male service members without adequate functional justification.

The international trend in democratic military establishments is clearly toward the elimination of gender-based distinctions in service conditions that are not justified by functional military requirements. The United States has moved most aggressively in this direction, and the FY2025 NDAA contained provisions enhancing the parental leave entitlements of service members and improving the childcare support available to military families. These developments reflect a

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recognition that an institution that aspires to recruit and retain the best available talent cannot afford to structure its service conditions in ways that make it unnecessarily difficult for individuals with particular life circumstances to serve.

35.4 The Emerging Framework of Military Personnel as Rights-Bearing Workers: International Standards and Bangladesh Implications

A significant development in international military law in the period since 2020 has been the growing recognition, in international human rights forums and in the domestic jurisprudence of democratic states, that military personnel are not merely instruments of state power but individuals with fundamental rights that the state is obligated to respect even within the context of military service. This recognition has implications for service conditions law that are profound and not yet fully worked through in the Bangladesh context.

The European Court of Human Rights has, over the past two decades, developed an extensive jurisprudence on the application of the European Convention on Human Rights to military personnel, holding consistently that the Convention's guarantees of fair trial, freedom of expression, freedom of association, and privacy apply in modified form to military personnel and that these rights can only be restricted to the extent that is genuinely necessary for the maintenance of military effectiveness. The Court has been particularly active in reviewing the conditions of service of military personnel in member states, including their rights to challenge decisions affecting their careers, their rights to associate in professional military associations, and their rights to adequate procedural protection in disciplinary proceedings.

Bangladesh is not a party to the European Convention on Human Rights, but the jurisprudence of the European Court is part of the broader international human rights framework that informs the interpretation of comparable rights under the Bangladesh Constitution and under the international instruments to which Bangladesh is a party. The International Covenant on Civil and Political Rights (ICCPR), ratified by Bangladesh, contains provisions on fair trial, freedom of expression, and freedom of association that apply in principle to military personnel, and the Human Rights Committee's general comments on these provisions are a source of authoritative guidance on their application in the military context.

The Human Rights First report "Beyond the Uniform: Ensuring Equal Rights for Service Members," published in December 2025, provides a comprehensive analysis of the extent to which military personnel in various jurisdictions enjoy rights comparable to those available to civilian workers, and identifies the key areas in which military service conditions law falls short of international human rights standards. The report's analysis of the right to collective bargaining, the right to freedom of expression, the right to privacy in military accommodation, and the right to effective legal remedy against service conditions decisions is directly relevant to the reform agenda for Bangladesh Air Force service conditions law.

CHAPTER THIRTY-SIX: MILITARY FAMILIES LAW: THE LEGAL POSITION OF DEPENDANTS AND FAMILY MEMBERS

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36.1 The Legal Status of Military Families: An Institutional and Constitutional Analysis

The family members of Bangladesh Air Force personnel occupy a legally distinctive position that is not always clearly defined in the formal legal framework but that has significant practical consequences for their welfare, their rights, and their legal remedies when things go wrong. Military families are neither entirely within the institutional framework of the air force, since they are not subject to military law and do not bear military obligations, nor entirely outside it, since they depend on the institution for their housing, much of their medical care, their children's education, and their social community in ways that civilians living ordinary lives do not.

The legal position of military families raises questions that span several areas of law: family law, in relation to the application of matrimonial law provisions to the service conditions of married service members; welfare law, in relation to the entitlements of family members to services provided by or through the institution; inheritance law, in relation to the disposition of a service member's pension and death benefits; and human rights law, in relation to the right of family members to be treated with dignity and to have their interests considered when institutional decisions affect them.

The law of military marriages and divorce has received increasing attention in jurisdictions where significant numbers of military personnel are married. In the United States, the Uniformed Services Former Spouses Protection Act (USFSPA) establishes the framework within which military retirement pay may be divided between a service member and a former spouse following divorce. The 2017 amendments to the USFSPA introduced significant changes to this framework, including the Frozen Benefit Rule which calculates the former spouse's share of the pension based on the service member's rank and years of service at the time of divorce rather than at the time of retirement. These reforms have been extensively litigated, with service members challenging calculations that they argue underrepresent the share of the pension attributable to the marital period, and former spouses challenging calculations that they argue fail to adequately reflect their contribution to the service member's career.

In Bangladesh, the legal framework governing the disposition of military pensions and death benefits in the context of family dissolution is less clearly developed. The applicable Muslim personal law, Hindu personal law, and civil family law provisions apply to military marriages and divorces as they do to other marriages, but the specific intersection of those provisions with the military pension framework has not been systematically addressed in legislation or judicial interpretation. The development of a clear legal framework in this area, addressing such questions as whether a service member's pension rights are marital property subject to division on divorce, what entitlements a former spouse retains after divorce to the service member's death benefits, and how the competing claims of a service member's widow and other dependants are to be managed, would serve the interests of legal clarity and justice for military families.

36.2 Family Housing Rights: Legal Entitlements and Challenges

The right of a military family to housing provided by or through the institution is one of the most practically significant dimensions of the legal position of military families. Service family accommodation, where available, represents a substantial benefit that enables military families to

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maintain a standard of residential comfort that might be difficult to achieve on the open housing market, particularly at posting stations in expensive urban areas. But the conditions of service family accommodation, and the rules governing its allocation, maintenance, and termination, give rise to significant legal questions.

The legal basis of the right to service family accommodation is established in the applicable regulations, which specify the type and standard of accommodation to which officers and airmen of different ranks and with different family circumstances are entitled. The allocation of specific quarters is a matter of administrative management, and disputes about the allocation, condition, and maintenance of family quarters are addressed through the internal administrative channels of the service.

The legal question of greatest practical significance in the context of family accommodation is what happens to the accommodation entitlement when the service relationship ends. If an officer or airman retires, is discharged, dies, or is dismissed from service, the family's entitlement to service accommodation typically terminates, and the family may be required to vacate the quarters within a prescribed period. The adequacy of this period, and the legal protection available to families who face sudden loss of their accommodation entitlement as a consequence of events beyond their control, including the death of the service member or his or her discharge on medical grounds, are matters of institutional concern and, in the view of this handbook, of constitutional significance.

36.3 The Education of Service Children: Legal Rights and Institutional Obligations

The education of the children of Bangladesh Air Force personnel is both a welfare provision and, in constitutional terms, a dimension of the right to education guaranteed by Article 17 of the Bangladesh Constitution. The distinctive educational challenge faced by the children of service members who are required to move frequently to new posting stations is that of maintaining continuity of educational experience and avoiding the disruption to academic progress that frequent changes of school can cause.

The Bangladesh Air Force maintains educational facilities at some of its major bases, and there are arrangements for the admission of service children to civilian schools in the vicinity of air force stations. The legal framework governing these arrangements is established in administrative instructions, and the adequacy of the educational provision available to service children is a matter of institutional policy rather than formal legal entitlement in most cases.

The constitutional dimension of the education provision requires more careful attention than it typically receives in the administration of air force welfare services. If the conditions of a service member's posting are such that his or her children cannot receive adequate education at the posting station, then the posting decision has an indirect adverse impact on the educational rights of those children that must be taken into account in the exercise of the discretion to post. The constitution does not permit institutional convenience to override the fundamental right of a child to education, and institutional decisions that systematically deprive service children of adequate educational opportunities are constitutionally suspect.

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CHAPTER THIRTY-SEVEN: THE EMERGING LEGAL FRAMEWORK FOR SERVICE CONDITIONS IN THE TWENTY-FIRST CENTURY AIR FORCE

37.1 Technological Change and Its Service Conditions Implications

The nature of air force operations is being transformed by technological change at a pace and depth that has significant implications for the legal framework of service conditions. The development of remotely piloted aircraft systems (RPAS), commonly known as drones, is the most visible dimension of this transformation, but it is accompanied by the integration of artificial intelligence into the command and control of air operations, the development of hypersonic weapons systems, the growing importance of cyber and electronic warfare, and the increasing dependence of air force operations on networked information systems that are vulnerable to adversarial disruption.

Each of these technological developments creates new categories of personnel with distinctive occupational profiles, skill requirements, and, in some cases, distinctive occupational health and safety risks. The operator of a remotely piloted aircraft is not subject to the physiological risks of manned aviation but may be subject to distinctive occupational health risks associated with prolonged screen-based work, the cognitive demands of operating complex autonomous systems, and the psychological impact of conducting lethal operations at a physical remove from the consequences of those operations. The legal framework of service conditions must adapt to these new occupational categories in ways that the existing framework, designed for the manned aviation world of the 1950s, does not fully accommodate.

The development of AI-assisted command and control systems raises a different set of service conditions issues related to the nature of the officer's professional responsibility and the accountability framework for decisions made with the assistance of algorithmic systems. If an officer makes a targeting decision on the basis of an AI recommendation that proves to have been based on flawed data, questions arise about the distribution of legal and professional responsibility between the officer and the institutional processes that deployed and maintained the AI system. These questions have significant implications for the conduct unbecoming and negligent performance of duty provisions of the Air Force Act, for the framework of military investigations, and for the career consequences that may attach to errors of judgment in a technologically complex environment.

37.2 Climate Change, Environmental Duties, and Air Force Service Conditions

The impacts of climate change on Bangladesh, one of the world's most climate-vulnerable nations, create distinctive service conditions implications for the Bangladesh Air Force. The more frequent and severe cyclones, floods, and other extreme weather events that Bangladesh is expected to experience as climate change progresses will increase the demands placed on the Bangladesh Air Force for humanitarian assistance and disaster relief (HADR) operations. These operations, while not combat operations in the conventional sense, involve significant hazard,

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logistical complexity, and personal sacrifice that must be reflected in the service conditions framework.

The legal framework governing the entitlements of Bangladesh Air Force personnel who participate in HADR operations should recognise the distinctive nature of these operations and provide appropriate compensation for the additional demands they place on personnel. The development of specific operational allowances, specific recognition provisions, and specific welfare support for personnel and their families during HADR deployments would be consistent with the broader principle that the state owes those who serve in its armed forces conditions of service that are proportionate to the demands it places upon them.

37.3 The Information Age and Privacy Rights of Service Members

The comprehensive surveillance infrastructure of the modern institution, combined with the technological capability to monitor communications, financial transactions, social media activity, and physical location in real time, creates significant privacy challenges for military personnel whose conditions of service have traditionally been understood to involve a substantial reduction in the privacy expectations that civilian employees would maintain.

The legal framework governing the privacy rights of Bangladesh Air Force personnel, including the extent to which their digital communications, social media activity, and off-duty personal conduct may be monitored and used as the basis for disciplinary action, is an area that has not yet been comprehensively addressed in the Bangladesh military law framework. The constitutional right to privacy, which the Supreme Court of Bangladesh has recognised as implicit in the right to life and personal liberty under Article 32, applies in principle to military personnel, though its application in the military context may be modified by the requirements of security and discipline.

The development of a clear legal framework governing the surveillance of military personnel, including the circumstances in which surveillance is permissible, the institutional authority required to authorise it, the uses to which information obtained through surveillance may be put, and the remedies available to personnel whose privacy has been unlawfully violated, is an important component of the reform agenda for Bangladesh Air Force service conditions law.

CHAPTER THIRTY-EIGHT: SYNTHESIS, REFORM PRIORITIES, AND THE VISION OF CONSTITUTIONALLY GROUNDED SERVICE CONDITIONS

38.1 The Comprehensive Assessment: Strengths and Weaknesses of the Existing Framework

The analysis undertaken in this Part of the Bangladesh Air Force service conditions framework reveals a picture of significant strengths accompanied by persistent structural weaknesses that require legislative attention and institutional reform.

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The principal strength of the existing framework is its comprehensiveness: the Air Force Act of 1953, the applicable regulations, and the supplementary administrative instructions provide a relatively complete framework for the governance of service conditions that addresses most of the principal categories of entitlement and obligation. The existence of this framework, however imperfect, provides a legal foundation on which reform can build, and the tradition of judicial review that the High Court Division has developed in relation to administrative decisions affecting military personnel provides a mechanism for ensuring that the framework is applied lawfully.

The principal structural weaknesses of the existing framework may be identified under several headings. First, the predominance of administrative discretion over legally defined entitlement in many areas of service conditions creates uncertainty and inconsistency in the treatment of service personnel, and reduces the practical enforceability of rights that are, in principle, recognised by the formal law. The reform agenda should aim to replace administrative discretion with clearly defined legal entitlements wherever the operational requirements of the service do not require the maintenance of discretion.

Second, the gap between the formal legal framework and the institutional culture within which it is applied is significant, particularly in relation to the treatment of mental health conditions, the investigation of service deaths and injuries, and the procedural fairness of administrative decisions affecting service conditions. The development of a culture of constitutional compliance within the Bangladesh Air Force, in which the formal legal protections of service personnel are understood as genuine rights rather than as administrative formalities, requires not only legislative reform but sustained investment in the professional military education programmes that shape the values and practices of officers exercising command authority.

Third, the constitutional reform process initiated after July 2024 creates both an opportunity and an obligation to bring the service conditions framework into closer alignment with contemporary constitutional standards. The potential justiciability of socioeconomic rights, the strengthening of equality provisions, and the enhancement of accountability mechanisms all have implications for service conditions law that the reform process should address explicitly and systematically.

Fourth, the comparative international experience, particularly the significant legislative developments in the United States (FY2025 NDAA), the United Kingdom (armed forces pay review and accommodation reforms of 2024), and Canada (Judge Advocate General's reforms of 2024-2025), provides a wealth of tested models for the improvement of military service conditions law that the Bangladesh reform process should actively engage with.

38.2 The Priority Reform Agenda: Legislative, Regulatory, and Institutional Dimensions

The priority reform actions for Bangladesh Air Force service conditions law, identified through the analysis of this Part, may be organised under three broad headings: legislative, regulatory, and institutional.

The principal legislative priority is the comprehensive revision of the Air Force Act to incorporate explicit provisions governing the service conditions of Bangladesh Air Force

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personnel, including provisions that establish legally defined entitlements to pay at prescribed rates, to accommodation or accommodation allowance, to medical care, to leave, and to pension, rather than leaving these entitlements entirely to delegated legislation and administrative instruction. The codification of service conditions entitlements in primary legislation would give them a legal force and permanence that administrative instructions cannot provide, and would ensure that any change in service conditions requires express legislative authority rather than mere administrative decision.

A secondary legislative priority is the enactment of specific legislation governing the compensation of service personnel and their families for service-related injuries and deaths, establishing clear legal standards for the attribution of disability or death to service, clear procedural requirements for the investigation of such cases, clear timelines for the determination and payment of compensation, and clear rights of appeal and judicial review. The existing framework, which relies heavily on administrative discretion in the determination of service-related death and injury claims, leaves too much room for institutional self-interest to disadvantage the legitimate claims of injured personnel and the families of the deceased.

The principal regulatory priorities include the reform of the pension regulations to eliminate provisions that are constitutionally suspect, including provisions permitting the forfeiture of pension rights without adequate procedural protection and provisions that treat the dependants of deceased personnel in ways that reflect outdated assumptions about family structure and gender roles. The pension regulations should also be reformed to incorporate the protections for reserve personnel identified in the comparative analysis, ensuring that reserve personnel who are activated for service are entitled to conditions comparable to those of their regular counterparts.

The principal institutional priorities include the development of an independent military ombudsman or Inspector General function with specific responsibility for receiving and investigating complaints about service conditions decisions, providing a forum for the resolution of service conditions disputes that does not depend entirely on internal military administrative channels, and producing annual reports on the state of service conditions in the Bangladesh Air Force that provide the aggregate information necessary for democratic accountability and informed policy reform. The institutional priorities also include the reform of the professional military education curriculum to integrate systematic engagement with the service conditions rights and obligations of air force personnel into the preparation of all officers for command responsibility.

38.3 The Vision: A Constitutionally Grounded Service Conditions Framework for the Twenty-First Century Bangladesh Air Force

The vision that animates the reform agenda advocated in this Part is a Bangladesh Air Force service conditions framework that is constitutionally grounded, legally enforceable, institutionally responsive, and reflective of the dignity and rights of the men and women who serve in it. This vision has several specific dimensions that deserve articulation.

A constitutionally grounded service conditions framework recognises that the legal relationship between the Bangladesh Air Force and its personnel is not merely an administrative relationship

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of command and obedience but a constitutional relationship of mutual obligation, in which the state's authority to demand the highest standards of professional performance, personal sacrifice, and institutional loyalty from its air force personnel is matched by the state's constitutional obligation to provide those personnel with conditions of service that are adequate, fair, and respectful of their fundamental rights.

A legally enforceable service conditions framework ensures that the rights of service personnel can be vindicated through effective legal mechanisms, including internal appeal procedures that provide genuine independence from the original decision-maker, and external judicial review that provides access to the civil courts as a backstop when internal procedures have failed. The enforceability of service conditions rights is not merely a matter of legal principle: it is a practical necessity for maintaining the professional trust and institutional loyalty that the Bangladesh Air Force requires of its members.

An institutionally responsive service conditions framework is one that evolves in response to changes in the operational environment, the social context, and the composition and needs of the workforce, rather than remaining frozen in the institutional assumptions of a previous era. The technological transformations of the twenty-first century, the growing diversity of the air force workforce, the changing social context in Bangladesh, and the evolving international human rights framework all require a service conditions framework that is capable of adaptation, and the legislative and regulatory architecture should be designed with this adaptability in mind.

A service conditions framework that is reflective of the dignity and rights of those who serve recognises that air force personnel are not merely resources to be managed but individuals with fundamental rights, personal lives, family relationships, and human needs that the institution has an obligation to respect. The management of service conditions must be infused with a genuine concern for the welfare of personnel and their families that goes beyond compliance with formal legal requirements, because the institutional culture of genuine care for people is ultimately the foundation of the professional excellence, personal commitment, and institutional loyalty that make an air force great.

SYNTHESIS OF PART NINE

The law of service conditions and personnel administration in the Bangladesh Air Force is, as this Part has demonstrated, a domain of legal thought and practice that is simultaneously philosophically rich, institutionally complex, historically layered, and practically urgent in its implications for the lives of the men and women who serve in the air force and for the families who support them.

The philosophical analysis of the legal character of military service, examining the status theory, the contractual theory, and the constitutional theory, reveals that the relationship between the Bangladesh Air Force and its personnel is best understood as a constitutional relationship of mutual obligation, grounded not merely in statute or custom but in the fundamental principles of the constitutional order that the air force exists to defend. This understanding has practical

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implications for the interpretation of every specific provision of service conditions law: it requires that those provisions be interpreted generously and in the light of constitutional values, and that gaps in the formal framework be filled by principles that reflect the underlying constitutional obligation rather than by the exercise of unconstrained administrative discretion.

The historical analysis demonstrates that the service conditions framework of the Bangladesh Air Force bears the marks of its colonial inheritance in its emphasis on administrative discretion, its limited procedural protections for service personnel, and its treatment of many entitlements as administrative grace rather than legal right. The progressive transformation of this framework into a system of constitutionally grounded, legally enforceable entitlements is one of the defining challenges of Bangladesh Air Force law in the contemporary period.

The legislative analysis, examining in detail the provisions governing pay, allowances, accommodation, medical care, leave, pension, disability compensation, and family benefits, reveals a framework that is comprehensive in its coverage but inconsistent in its legal force, with some entitlements clearly established and enforceable while others depend on administrative discretion that is not adequately constrained by legal principle.

The comparative analysis, drawing on the significant recent developments in the military service conditions law of the United States, the United Kingdom, Canada, and other comparable jurisdictions, identifies multiple specific reforms that have been tested in practice and found to improve both the fairness of service conditions and the operational effectiveness of the forces concerned. These comparative models, from the pension reforms prompted by the McCloud judgment and the Milroy case in the United Kingdom, to the comprehensive quality of life initiatives of the FY2025 NDAA in the United States, to the ongoing reform programme of the Canadian Judge Advocate General's office, provide a rich resource for the Bangladesh reform agenda.

The constitutional analysis, examining the implications of the 2024 reform process for service conditions law, identifies the potential justiciability of socioeconomic rights as the most transformative single development in the constitutional landscape, and traces its implications for the enforceability of service members' rights to adequate pay, adequate accommodation, adequate medical care, and adequate pension.

The institutional analysis, addressing the practical dimensions of mental health care, aviation safety, occupational health, family welfare, and post-service resettlement, identifies the gap between formal legal entitlements and the lived experience of service personnel as the central challenge of service conditions law in practice, and advocates for a comprehensive programme of institutional reform that addresses both the formal legal framework and the institutional culture within which that framework is applied.

The integrated conclusion that emerges from all of these dimensions of analysis is that the law of service conditions in the Bangladesh Air Force is at a critical juncture. The constitutional transformation of 2024, the comparative experience of democratic military establishments worldwide, the growing body of international human rights standards applicable to military personnel, and the urgent practical needs of an air force facing the distinctive challenges of the

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twenty-first century all point in the same direction: toward a service conditions framework that is constitutionally grounded, legally enforceable, institutionally responsive, and reflective of the dignity and rights of those who serve.

The achievement of this vision requires sustained legislative reform, systematic regulatory revision, determined institutional culture change, and the continued development of a body of judicial jurisprudence that applies constitutional principles with genuine rigour to the service conditions decisions of the Bangladesh Air Force. This handbook aspires to contribute to that project by providing the intellectual framework within which the reform agenda can be understood, advocated, and eventually implemented.

The price that the Bangladesh Air Force asks of its officers and airmen and airwomen is extraordinary: years of life devoted to a demanding institution, exposure to risks that their civilian contemporaries do not face, the subordination of personal preference and family life to the requirements of the service, and the ultimate willingness to sacrifice life itself in the defence of the nation. The price that the nation owes in return is a service conditions framework that treats those extraordinary demands as the extraordinary sacrifices they are, and that provides in exchange the conditions of service, the legal protections, the financial entitlements, the welfare provisions, and the institutional respect that such sacrifice deserves.

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EDITORIAL NOTE: Part Ten of this handbook, the final Part, will address the future of Bangladesh Air Force law, examining the emerging challenges of the next generation of air power, the priority reform agenda for the legal framework as a whole, the vision of a constitutionally grounded, professionally effective, and institutionally legitimate Bangladesh Air Force for the twenty-first century, and the enduring lessons of the philosophical, historical, and jurisprudential analysis undertaken across the nine preceding Parts. Part Ten will serve as both a conclusion to the handbook and a prospectus for the continuing work of legal development that the Bangladesh Air Force and its legal community must undertake in the decades ahead.

This handbook is intended as an educational and scholarly resource. It does not constitute legal advice. Officers seeking guidance on specific legal questions arising in the course of their duties should consult the legally qualified advisers of the Bangladesh Air Force.

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This Part is dedicated to the men and women of the Bangladesh Air Force, and to the families who support them, whose service and sacrifice are the reason this framework of law exists, and whose dignity and rights are the ultimate measure of its adequacy.

End of Part Nine

PART TEN

THE FUTURE OF BANGLADESH AIR FORCE LAW: EMERGING CHALLENGES, THE COMPREHENSIVE REFORM VISION, AND THE JURISPRUDENCE OF A TRANSFORMED INSTITUTION

PREFATORY NOTE TO PART TEN

There is something philosophically distinctive about a final chapter, and the reader who has accompanied this handbook through nine preceding Parts deserves an honest acknowledgment of what that distinctiveness involves. The final chapter of a work of jurisprudence is not merely a summary of what has come before. It is an exercise in prospective thinking, an attempt to look from the vantage point of what the law currently is toward what it should become, informed by everything the analysis has revealed about the internal logic of the legal system, the historical forces that have shaped it, the philosophical principles that should govern it, and the practical challenges that will determine whether reform succeeds or fails. This is not prophecy. It is the disciplined extrapolation of legal analysis into a domain of institutional possibility that practitioners and scholars have both the obligation and the capacity to influence.

Part Ten is written against the backdrop of what may be one of the most consequential periods in the history of Bangladesh Air Force law since the force was created in 1971. The political transformation initiated by the Monsoon Revolution of July 2024 has not run its course. As of April 2026, Bangladesh is navigating the final approach to a national election projected for the first months of 2026, while simultaneously managing an active constitutional reform process that reached a new parliamentary dimension on March 31, 2026, when the Law Minister addressed Parliament's discussion of the Constitution Reform Council, insisting that all reform must be implemented within the constitutional framework and that the July National Charter represents the public mandate of the uprising. The Bangladesh Army Chief General Waqar Uz Zaman has, throughout 2025, signalled his institution's desire for a return to civilian governance, declaring publicly that the army is meant for defending the nation and not for policing, a statement that has profound implications for civil-military relations law that this Part will examine closely.

At the same time, the Bangladesh Air Force is in the midst of its most ambitious modernisation effort in its history. The signing of a Letter of Intent with Italy's Leonardo for the procurement of Eurofighter Typhoon combat aircraft on December 9, 2025, at Air Force Headquarters in Dhaka, in the presence of Air Chief Marshal Hasan Mahmood Khan, marks a watershed moment not

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only in operational capability but in the entire legal architecture of Bangladesh Air Force procurement, technology transfer, and international engagement. The Bangladesh Air Force simultaneously maintains advanced negotiations for Chinese J-10 fighters, has evaluated Turkish T-129 ATAK attack helicopters, and has expanded its unmanned aerial vehicle capabilities as part of the comprehensively revised Forces Goal 2030 programme. The legal dimensions of this procurement revolution are enormous, and they will shape the work of Bangladesh Air Force lawyers for a generation.

This Part is therefore simultaneously a conclusion, a synthesis, and a beginning. It draws together the threads of legal analysis from the nine preceding Parts into a coherent account of where Bangladesh Air Force law stands at the beginning of 2026, examines the most significant emerging challenges across multiple domains, articulates a comprehensive vision for the reformed air force legal framework, and offers the practitioners and scholars who will carry this work forward a set of intellectual tools adequate to the magnitude of the task ahead.

CHAPTER THIRTY-NINE: THE CONSTITUTIONAL TRANSFORMATION AND ITS IMPLICATIONS FOR THE ENTIRE LEGAL FRAMEWORK OF THE BANGLADESH AIR FORCE

39.1 The July Revolution and the July National Charter: Constitutional Significance and Legal Implications

The events of July 2024 in Bangladesh represent one of the most significant constitutional ruptures in the country's history since the liberation war of 1971. A student-led mass uprising, triggered by protests against the government employment quota system but rapidly expanding into a comprehensive challenge to what protesters characterised as authoritarian governance, resulted in the departure of Prime Minister Sheikh Hasina on August 5, 2024, the dissolution of the elected government, and the installation of an interim administration under Nobel laureate Professor Muhammad Yunus as Chief Adviser. The scale and intensity of the protests, the extraordinary courage of the student leadership, and the political legitimacy of the popular rejection of a government that had employed lethal force against its own citizens combined to create what participants and observers alike have described as a second founding moment for Bangladesh.

The constitutional significance of these events for Bangladesh Air Force law is deep and multi-dimensional. The July Revolution, as it has come to be known, did not merely change the government. It changed the terms on which the legitimacy of institutional power, including military power, is understood. The Bangladesh Air Force, as a key institution of the state, was implicitly on trial in the court of public opinion during those weeks of protest and confrontation. The force's institutional behaviour during the uprising, its restraint in avoiding direct involvement in the suppression of the protests while the police and paramilitary forces were deployed against demonstrators, and the subsequent statements of the Air Force leadership supporting constitutional governance and civilian accountability, have shaped the institutional

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reputation of the Bangladesh Air Force in ways that will influence its legal and political standing for years to come.

The July National Charter, the constitutional reform document that emerged from the interim government's reform commissions, and the Implementation Order of 2025 that gave it legal effect, represent the normative architecture within which the constitutional reform process is proceeding. The Constitution Reform Commission's recommendations, submitted in early 2025, address a range of issues directly relevant to Bangladesh Air Force law: the structure of parliamentary oversight of the defence forces, the constitutional foundation for civilian control of the military, the proposed justiciability of socioeconomic rights, the strengthening of constitutional protections against arbitrary exercise of state power, and the accountability mechanisms applicable to state institutions, including the armed forces.

The parliamentary discussion on March 31, 2026, in which the Law Minister insisted that all reform initiatives must be implemented within the constitutional framework, reflects the principle that the revolutionary rupture of July 2024 does not justify the abandonment of constitutional legality but rather demands its reinvigoration. For Bangladesh Air Force law, this principle has an immediate operational significance: reforms to the military justice system, the service conditions framework, the procurement legal architecture, and the civil-military relations framework must be grounded in constitutional authority rather than in the informal authority of institutional power or revolutionary legitimacy. The distinction between lawful constitutional reform and the mere imposition of change by whoever holds institutional power is precisely the kind of distinction that a mature air force legal framework must be equipped to make, apply, and enforce.

39.2 The Constitution Reform Commission's Recommendations: Specific Implications for Air Force Law

The Constitution Reform Commission of Bangladesh, whose recommendations were submitted in early 2025 and have been the subject of active political and legal debate since, contained several proposals whose implications for the legal framework of the Bangladesh Air Force are direct and significant.

The most transformative proposal in constitutional terms, which was examined partially in Part Nine, is the proposal to make socioeconomic rights directly justiciable. The Commission recommended that the provisions of Part II of the Constitution, currently designated as Fundamental Principles of State Policy that are guidelines for the interpretation of law but not judicially enforceable in themselves, be redesignated as directly enforceable rights. If this proposal is implemented through a constitutional amendment, it would fundamentally alter the legal character of the entitlements that Bangladesh Air Force personnel have to adequate pay, adequate medical care, adequate accommodation, and adequate pension. These entitlements, currently enforceable only indirectly through administrative law, would become constitutional rights that could be vindicated directly in the High Court Division through constitutional litigation.

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The practical implications for Bangladesh Air Force service conditions law would be substantial. An officer who believes that the pay scale applicable to his rank is inadequate to meet the constitutional standard of a dignified life could bring a constitutional petition directly challenging the adequacy of the pay scale. A family that believes that the pension payable to the widow of a deceased airman is constitutionally inadequate could challenge the pension rate as a violation of the constitutional right to social security. These are not frivolous claims: they are the logical consequence of treating socioeconomic rights as genuine constitutional rights rather than aspirational policies.

The Commission also recommended strengthening the constitutional framework for civilian oversight of the armed forces, including the establishment of a dedicated parliamentary committee with powers to scrutinise defence budgets, review military procurement decisions, and conduct oversight of the military justice system. This recommendation, if implemented, would fundamentally change the accountability environment within which Bangladesh Air Force law operates. The existing constitutional framework provides for parliamentary control of the armed forces through the general mechanism of parliamentary oversight of executive action, but the specific mechanisms for parliamentary scrutiny of defence matters are not as developed in Bangladesh as they are in comparable democratic military jurisdictions.

The Commission's recommendation on the reform of the judiciary includes provisions that are indirectly significant for military justice: the proposed strengthening of judicial independence, the reform of the appointment mechanisms for superior court judges, and the enhancement of the power of judicial review over executive action all create a more robust civilian judicial check on military administrative decisions than the existing framework provides.

39.3 Civil-Military Relations in the New Political Landscape: Theoretical Frameworks and Practical Implications

The intellectual framework for understanding civil-military relations was examined in Part Seven of this handbook. The political developments of 2024-2026 require a return to that framework with the specific developments in view, because the theoretical models developed in that Part must now be applied to a situation that is more fluid, more contested, and more constitutionally significant than the relatively stable civil-military landscape that preceded the July Revolution.

Samuel Huntington's objective civilian control model, in which the armed forces are kept politically neutral and constitutionally subordinate through the professionalisation of the officer corps, faces its most serious empirical challenge in Bangladesh's current situation. The Bangladesh armed forces, and in particular the Bangladesh Army, played a constitutionally significant role in the events of July and August 2024: not through direct intervention in the political process but through strategic restraint, through the withholding of support from a government that the army leadership had concluded had lost its legitimacy, and through subsequent statements that signalled support for constitutional reform and civilian governance. This behaviour, while constitutionally better than direct military intervention, is nonetheless a form of political agency on the part of the military that sits in some tension with the strict Huntingtonian model of apolitical professionalism.

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Morris Janowitz's constabulary force model, in which the armed forces are understood as a force for the maintenance of minimum public order rather than primarily for fighting wars, finds in Bangladesh's recent experience some empirical support but also some important qualifications. The deployment of the armed forces in maintenance of order during the protests of July 2024, and the continuing role of the army in law enforcement activities during the interim government period, represents exactly the kind of constabulary function that Janowitz's model anticipates. But Army Chief Zaman's public declaration in 2025 that the army is meant for defending the nation and not for policing represents a significant institutional rejection of the constabulary role, a rejection that aligns with the Huntingtonian professional model and that has significant implications for the future relationship between the Bangladesh Air Force and civilian authority.

For the Bangladesh Air Force specifically, the civil-military relations framework of 2026 is shaped by the Air Force's distinctive position within the broader military institutional landscape. The Bangladesh Air Force is the most technically specialised of the three services, the most dependent on sophisticated foreign-sourced equipment and training, and the most directly engaged with the international military community through UN peacekeeping aviation operations and the emerging Western defence partnerships reflected in the Eurofighter Typhoon LOI. These characteristics make the Bangladesh Air Force both particularly dependent on constitutional civilian governance, since the procurement of Western military equipment requires the kind of stable, treaty-compliant, democratically accountable governance that Western governments demand as a condition of major defence sales, and particularly well positioned to serve as a model of constitutionally grounded professionalism within the broader Bangladesh military institutional landscape.

The Clausewitzian insight that war is the continuation of politics by other means, so often quoted in discussions of civil-military relations, carries a specific implication for the Bangladesh Air Force's institutional culture that deserves articulation. Air force operations, including combat operations, reconnaissance and intelligence gathering, humanitarian assistance and disaster relief, and UN peacekeeping contributions, are all political acts in the deepest Clausewitzian sense: they are instruments of national policy, expressing and advancing the strategic interests of the state. The command and legal framework governing those operations must therefore be embedded in a constitutional order that connects military action to democratic deliberation and civilian oversight. The legal framework of the Bangladesh Air Force exists, at its most fundamental level, to maintain that connection. The reform agenda that this handbook has been building toward is, in the final analysis, a project to strengthen that connection and to ensure that it remains effective as the operational environment of the Bangladesh Air Force transforms.

CHAPTER FORTY: THE LEGAL ARCHITECTURE OF MILITARY MODERNISATION: PROCUREMENT LAW, TECHNOLOGY TRANSFER, AND INTERNATIONAL DEFENCE AGREEMENTS

40.1 Defence Procurement as a Domain of Public Law: Theoretical Foundations

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The legal framework governing defence procurement is among the most complex, consequential, and least academically studied areas of military law. In a world where the procurement of a major weapons system involves the simultaneous operation of international treaty law, domestic constitutional law, administrative law, contract law, export control law, technology transfer law, intellectual property law, and the political economy of defence industrial policy, the lawyer who advises on procurement decisions must command a breadth of legal knowledge that rivals the most demanding areas of commercial legal practice.

Defence procurement law is, at its foundation, a domain of public law. The state is the purchasing authority, and the constitutional constraints on the exercise of public power apply to procurement decisions just as they apply to any other exercise of governmental authority. The equal treatment principle requires that procurement competitions be conducted fairly and transparently. The anti-corruption principle requires that procurement officials be free from the corrupting influence of private interests. The accountability principle requires that major procurement decisions be subject to parliamentary scrutiny and public oversight. The rule of law requires that procurement decisions be made in accordance with established legal procedures rather than on the basis of arbitrary executive preference.

At the same time, defence procurement has distinctive features that differentiate it from ordinary public procurement and that may justify different procedural requirements in particular respects. The national security dimension of defence procurement creates legitimate grounds for confidentiality in some aspects of the process that would not be acceptable in ordinary public procurement. The technical complexity of major weapons systems means that evaluating competing offers requires specialist expertise that may not be available within the ordinary civil service. The geopolitical dimension of defence procurement means that the choice of supplier is not merely a commercial decision but a strategic foreign policy decision that may have implications for the state's international relationships that go well beyond the specific capability being acquired.

The theoretical framework most helpful for understanding defence procurement law is the public choice theory developed by economists like James Buchanan and Gordon Tullock, applied to the specific institutional context of military acquisition. Public choice theory analyses the behaviour of government decision-makers not as disinterested public servants pursuing the common good but as rational actors with their own interests, biases, and constraints who operate within a specific institutional environment. Applied to defence procurement, this framework predicts that procurement decisions will be influenced not only by genuine assessments of military need and value for money but also by the interests of the officials responsible for the decision, the political relationships between the state and potential supplier governments, the domestic political economy of defence industrial policy, and the institutional culture of the military service concerned.

This framework is not a counsel of cynicism but a tool for identifying the institutional safeguards necessary to ensure that defence procurement decisions are made on the basis of genuine military need rather than on the basis of corruption, political favour, or industrial lobbying. The legal framework for defence procurement in Bangladesh, while not the principal subject of any of the preceding Parts of this handbook, creates the context within which Bangladesh Air Force

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aviation law operates and has implications for the legal framework governing the entire range of Air Force activities. The dramatic procurement decisions of 2025-2026, including the Eurofighter Typhoon LOI, the J-10 negotiations, and the Japan defence equipment and technology transfer agreement of February 3, 2026, make this framework immediately relevant.

40.2 The Eurofighter Typhoon Letter of Intent: Legal Analysis and Institutional Implications

The signing of the Letter of Intent between the Bangladesh Air Force and Leonardo S.p.A of Italy on December 9, 2025, for the procurement of Eurofighter Typhoon multi-role combat aircraft is, as the preceding Part noted, a watershed moment in Bangladesh Air Force history. From the perspective of this handbook, it is also a legally significant event whose implications deserve careful analysis.

A Letter of Intent in the context of major defence procurement is not a binding contract. It is a formal expression of the parties' intention to proceed toward a binding contract, establishing the general framework of the intended transaction, identifying the principal terms to be negotiated, and creating certain obligations of good faith negotiation without creating the full range of rights and obligations that a definitive purchase agreement would establish. The legal status of the LOI, and the specific obligations it creates, must be determined by reference to its specific terms, which have not been made fully public, and by reference to the general principles of international commercial law and the law of pre-contractual obligations.

For Bangladesh Air Force law, the Eurofighter Typhoon LOI has implications at several levels. At the operational level, the eventual procurement of Eurofighter Typhoon aircraft, expected to number between 10 and 16 aircraft based on the available reporting, will require the development of new legal frameworks governing the operation, maintenance, and modification of these aircraft. The Typhoon is a fundamentally different aircraft from anything currently in the Bangladesh Air Force inventory: it is a fourth-generation-plus aircraft with advanced electronic warfare systems, active electronically scanned array (AESA) radar, network-centric warfare capability, and precision-guided weapons integration that require legal frameworks for operation, armament carriage, and engagement authority that are considerably more sophisticated than those applicable to the Chengdu J-7 aircraft that the Typhoon will replace.

At the procurement level, the LOI creates a legal obligation framework between the Bangladesh Air Force and Leonardo that will govern the conduct of negotiations toward a definitive purchase agreement. The legal principles that apply to these negotiations include the general obligation of good faith negotiation under both the civil law of Italy and the public procurement law of Bangladesh, the specific terms of the LOI itself, and the international commercial law principles applicable to transactions of this magnitude. The procurement of major Western military equipment by Bangladesh for the first time requires the development of legal competency within the Air Force's legal and administrative framework that is not currently well-established, and this is an area where investment in specialist legal capacity is urgently needed.

At the international relations level, the Eurofighter Typhoon LOI reflects Bangladesh's emerging strategic repositioning toward Western defence partnerships, a shift that has significant

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implications for the international legal framework within which the Bangladesh Air Force operates. The Western countries associated with the Eurofighter programme, the United Kingdom, Germany, Italy, and Spain, each have their own export control legal frameworks that govern the terms on which they supply advanced military technology to non-alliance partners. The Standard Security Agreement that the United States and European states typically require as a condition of major defence technology transfers addresses the protection of classified information and technology, and Bangladesh's negotiation of such agreements creates new obligations under international security law that the Bangladesh Air Force's legal framework must accommodate.

At the aviation law level, the Eurofighter Typhoon presents specific challenges for Bangladesh Air Force aviation safety law that go beyond the general framework discussed in Part Eight. The Typhoon's advanced avionics, its complex software architecture, its integration with data-linked tactical information systems, and its capabilities in the electronic warfare and beyond-visual-range combat domains all require safety management frameworks more sophisticated than those currently applicable to the aircraft types in the Bangladesh Air Force inventory. The Life Extension Programme and software update cycles that are integral to the Typhoon's operational life create ongoing legal obligations regarding airworthiness management that the Bangladesh Air Force's safety authority must be equipped to discharge.

At the procurement integrity level, the LOI and the subsequent contract negotiations present challenges of transparency and anti-corruption compliance that deserve attention in any rigorous legal analysis. Major defence procurement decisions, in Bangladesh as in other countries, have historically been vulnerable to corruption because of the combination of high value, technical complexity that makes independent assessment difficult, classified information that limits public scrutiny, and the geopolitical dimensions that mix commercial and strategic considerations. The Bangladesh Air Force's legal framework for procurement integrity, including the mechanisms for conflict of interest management, the requirements for transparency in evaluation criteria, and the anti-corruption safeguards in the contracting process, will be tested by the Eurofighter acquisition in ways that have not previously arisen in Bangladesh Air Force procurement.

40.3 The Japan Defence Technology Agreement of February 2026: International Law Dimensions

The signing, on February 3, 2026, in Dhaka, of a formal agreement between Bangladesh and Japan on defence equipment and technology transfer, with signatures provided by Lieutenant General SM Kamrul Hassan, the Principal Staff Officer of the Bangladesh Armed Forces Division, and Japanese Ambassador Saida Shinichi, represents a significant development in Bangladesh's international defence legal framework. This agreement, described in the available reporting as establishing a legal framework that governs the handling and transfer of military equipment between the two nations, creates a bilateral treaty obligation structure that has direct implications for the Bangladesh Air Force's legal framework.

Japan's export control law, the Foreign Exchange and Foreign Trade Act (FEFTA), which governs the export of defence equipment and technology from Japan, was significantly revised in 2014 to permit government-to-government defence equipment transfers for the first time since

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World War II, and has been further liberalised in subsequent years to support Japan's growing international defence industrial engagement. The legal framework that the February 2026 agreement creates for Bangladesh-Japan defence technology transfer must be understood within the context of Japan's domestic export control law, and any Bangladesh Air Force procurement of Japanese-origin equipment will be subject to the specific conditions and restrictions that Japanese law imposes.

For the Bangladesh Air Force, the specific significance of Japanese defence technology lies in two areas: precision guidance and sensor technology, in which Japan's defence industry has developed world-class capabilities, and maritime patrol aviation, which is relevant to the Bangladesh Air Force's emerging role in maritime domain awareness in the Bay of Bengal. The legal framework governing the transfer, operation, and potential modification of Japanese defence technology by the Bangladesh Air Force will need to address the specific intellectual property protections, end-user certificate requirements, and re-transfer restrictions that Japan's export control law imposes.

40.4 The Legal Framework for Multi-Supplier Procurement: Managing Competing International Legal Obligations

The Bangladesh Air Force's emerging multi-supplier procurement strategy, which simultaneously maintains engagement with Chinese, Russian, Western European, American, Turkish, and Japanese defence industries, creates a complex web of international legal obligations that the Bangladesh Air Force's legal framework must navigate. Different supplier countries impose different conditions on the transfer of their defence technology, require different end-user agreements, impose different restrictions on the subsequent modification or transfer of the technology supplied, and maintain different regimes of ongoing oversight of the use of the technology they have supplied.

The management of these competing and potentially conflicting international legal obligations is a challenge of significant complexity for Bangladesh Air Force law. The simultaneous pursuit of the Eurofighter Typhoon from the European consortium and the J-10 from China, for example, creates a potential conflict of interest that the legal framework must address. Both the Eurofighter consortium countries and China impose conditions on the transfer of their advanced military technology that reflect their geopolitical interests and their technology protection concerns, and some of those conditions may be inconsistent with the conditions imposed by the other. The legal framework governing the Bangladesh Air Force's management of these competing obligations does not yet exist in the systematic form that the emerging multi-supplier strategy requires.

The development of a comprehensive Bangladesh Air Force Procurement Legal Framework, addressing the constitutional requirements for parliamentary oversight of major acquisitions, the administrative law requirements for transparent and accountable procurement procedures, the international law requirements arising from bilateral and multilateral defence technology agreements, and the contract law framework governing the rights and obligations of the parties to defence supply agreements, is a project that this handbook identifies as one of the highest priority legal reform needs for the Bangladesh Air Force in the coming decade.

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CHAPTER FORTY-ONE: AUTONOMOUS WEAPONS, ARTIFICIAL INTELLIGENCE, AND THE EMERGING LEGAL FRONTIER OF AIR FORCE LAW

41.1 The Legal Status of Autonomous Weapons Systems: International Humanitarian Law in the Age of Machine Decision

Among all the emerging legal challenges facing the Bangladesh Air Force in the coming generation, none is more profound or more philosophically challenging than the question of the legal status of autonomous weapons systems and the implications of artificial intelligence for the law of armed conflict. This is not a distant or speculative concern. The Bangladesh Air Force's own procurement plans, including the interest in drone capabilities and the prospective integration of advanced AI-enabled systems from Western and other suppliers, make it an immediate practical challenge as well as a jurisprudential frontier.

The fundamental legal problem posed by autonomous weapons systems, which can identify, select, and engage targets without real-time human intervention, is the problem of accountability. International humanitarian law, as codified in the Geneva Conventions and their Additional Protocols and developed through decades of State practice and jurisprudential elaboration, is built on the assumption that the persons who make decisions about the use of lethal force against other persons are identifiable human agents who can be held legally accountable for their decisions. An autonomous weapons system that makes a targeting decision without human intervention challenges this assumption at its foundation: if the machine makes the decision, who is legally responsible for the consequences?

The three principal theoretical positions on this question in contemporary international humanitarian law scholarship are the manufacturer liability theory, the commanding officer liability theory, and the State responsibility theory. The manufacturer liability theory holds that the developers and producers of autonomous weapons systems bear legal responsibility for the consequences of the systems' autonomous decisions, since it is their design choices that determine how the system behaves. This theory is attractive in its directness but faces serious practical and doctrinal difficulties, including the challenge of establishing causation between design decisions and specific operational outcomes and the political resistance of major weapons-producing states to accepting liability for the consequences of systems they supply to other states.

The commanding officer liability theory holds that the military officer who deploys an autonomous weapons system is responsible for its conduct in the same way that a commander is responsible for the foreseeable consequences of orders given to subordinates. On this view, the deployment of an autonomous weapons system that foreseeably causes unlawful harm is equivalent to an order to cause that harm, and the commanding officer is criminally liable. This theory has the merit of preserving the existing accountability framework of international humanitarian law, but it requires a standard of foreseeability that may be very difficult to meet in practice when the behaviour of complex AI systems is genuinely unpredictable.

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The State responsibility theory holds that the deployment of autonomous weapons systems is a State act for which the deploying State bears international responsibility under the general principles of State responsibility, without requiring the attribution of personal criminal liability to any individual officer. This theory has the merit of capturing the systemic character of autonomous weapons deployment decisions and ensuring that the consequences of those decisions are borne by the State rather than displaced onto individuals, but it does not address the criminal accountability dimension that international humanitarian law increasingly requires.

For the Bangladesh Air Force, these theoretical questions have practical implications that manifest most directly in the rules of engagement governing the use of drone systems and other AI-enabled platforms, in the training requirements applicable to officers who supervise the operation of semi-autonomous systems, in the accident investigation framework applicable when autonomous systems cause unintended harm, and in the legal review processes applicable to the procurement of AI-enabled weapons systems. The development of a Bangladesh Air Force policy on autonomous weapons systems, grounded in the applicable provisions of international humanitarian law and consistent with the constitutional framework governing the use of lethal force, is an urgent legal project that the existing framework does not yet adequately address.

41.2 The Drone Revolution and Bangladesh Air Force Law: Operational, Regulatory, and Constitutional Dimensions

The National Cooperation Party's electoral manifesto for the 2026 election proposes the establishment of a full-fledged UAV brigade within the Bangladesh Army, with an initial investment of approximately Tk 2,500 crore over five years, and the Bangladesh Air Force's own modernisation agenda includes the expanded use of drone systems for intelligence, surveillance, and reconnaissance. The legal framework governing drone operations by the Bangladesh Air Force is therefore not merely a theoretical concern but an immediate operational and administrative challenge.

The legal framework for military drone operations has three principal dimensions. The first is the domestic aviation law dimension: the operation of unmanned aerial vehicles in Bangladesh's national airspace is subject to the regulatory authority of the Bangladesh Civil Aviation Authority, whose framework for drone operations has been progressively developed since 2018 and most recently updated in 2024. Military drone operations in national airspace must be coordinated with the BCAA framework, and the legal basis for the exemptions and special authorisations applicable to military drone operations should be clarified in a formal legal framework rather than managed through informal coordination.

The second dimension is the international law dimension, which arises when Bangladesh Air Force drones operate beyond national territory, as they do on UN peacekeeping missions and in connection with maritime surveillance operations in the Bay of Bengal. The legal basis for drone operations in the airspace of foreign states, the rules governing the conduct of drone operations in international airspace, and the liability framework applicable when military drones cause unintended harm in foreign territory all require clear legal foundations that the existing Bangladesh Air Force legal framework does not fully provide.

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The third dimension is the constitutional dimension: the deployment of armed drones capable of conducting lethal strikes raises constitutional questions about the authority framework for the use of lethal force that are at least as significant as those raised by the deployment of manned combat aircraft. The constitutional requirement that the use of lethal force by the armed forces be authorised by the appropriate civilian authority, conducted within the framework of the applicable rules of engagement, and subject to accountability for the consequences does not diminish because the platform making the strike is unmanned. If anything, the relative ease and low human cost of conducting lethal strikes with unmanned platforms makes the constitutional constraints on the use of such force more important, not less, because the political and human costs that historically have restrained the use of lethal force by democratic states are reduced when the personnel conducting the strike are not themselves at risk.

41.3 Cyber Warfare and the Bangladesh Air Force: Legal Frameworks for a New Operational Domain

The Bangladesh Air Force's operational dependence on networked information systems, including the C4ISR (command, control, communications, computers, intelligence, surveillance, and reconnaissance) infrastructure that modern air operations require, creates a distinctive legal challenge in the domain of cyber warfare. Hostile cyber operations targeting Bangladesh Air Force systems, whether conducted by state or non-state adversaries, have the potential to compromise the operational effectiveness of the Air Force, to cause physical damage to aircraft and related infrastructure, and to endanger the lives of air force personnel and civilians in ways that the existing legal framework does not clearly address.

The legal framework governing Bangladesh's response to hostile cyber operations is currently fragmentary. The Information and Communication Technology (ICT) Act of 2006 and the Digital Security Act of 2018, with their subsequent amendments and revisions in 2023, provide a framework for the prosecution of domestic cybercrime but do not adequately address the international law dimensions of State-sponsored cyber attacks against military infrastructure. The applicable international law, including the Tallinn Manual on the International Law Applicable to Cyber Operations, which represents the most authoritative academic analysis of how international humanitarian law applies to cyberspace, provides guidance but not binding legal rules for the Bangladesh Air Force's response to hostile cyber operations.

The Bangladesh Air Force's legal framework for cyber operations must address several distinct dimensions: the defensive dimension, including the legal authority and obligations of Air Force cyber security units to defend Air Force systems and networks against hostile intrusion; the offensive dimension, including the legal framework within which the Air Force might conduct offensive cyber operations against adversary systems as part of military operations; the attribution dimension, including the legal standards that must be met to attribute a hostile cyber operation to a specific state actor as a basis for a legal response; and the accountability dimension, including the framework of legal responsibility applicable when cyber operations cause unintended harm.

The Tallinn Manual 2.0, published in 2017 and remaining the most comprehensive academic analysis of international law and cyber operations, provides a framework that Bangladesh Air

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Force lawyers should study carefully in developing the legal foundation for Bangladesh Air Force cyber operations. The Manual's analysis of when cyber operations constitute uses of force under Article 2(4) of the UN Charter, when they constitute acts of armed attack that trigger the right of self-defence under Article 51, and how the principles of necessity, proportionality, and distinction apply in the cyber domain provides the doctrinal foundation for a legal framework that the Bangladesh Air Force currently lacks.

CHAPTER FORTY-TWO: INTERNATIONAL HUMANITARIAN LAW AND THE FUTURE OF BANGLADESH AIR FORCE OPERATIONS

42.1 International Humanitarian Law: The Enduring Framework and Its Contemporary Challenges

International humanitarian law (IHL), the body of international law that governs the conduct of armed conflict and seeks to limit its human costs, is one of the principal international legal frameworks within which Bangladesh Air Force operations are conducted. The core principles of IHL, including the principles of distinction, proportionality, military necessity, and humanity, apply to all Bangladesh Air Force operations that take place in the context of armed conflict, whether in national territory, in the context of UN peace enforcement operations, or as part of internationally authorised military action.

The Bangladesh Air Force's commitment to IHL compliance is both a legal obligation and an institutional value. As a significant contributor to UN peacekeeping and peace enforcement operations, Bangladesh has a specific institutional interest in the maintenance and development of IHL, since the credibility of Bangladesh's peacekeeping contribution depends in significant part on the international community's confidence that Bangladesh's military forces comply with the applicable rules of international humanitarian law. Any credible allegation of IHL violations by Bangladesh Air Force personnel would have immediate and severe consequences for Bangladesh's peacekeeping reputation and for the valuable flow of UN reimbursements that peacekeeping participation generates.

The contemporary challenges to IHL that are most directly relevant to Bangladesh Air Force law include the application of IHL to non-international armed conflicts, which present distinct challenges of threshold, applicability, and attribution compared with international armed conflicts; the application of IHL to cyber operations, which the Tallinn Manual has analysed but which has not yet produced binding international legal rules; the application of IHL to autonomous weapons systems, where, as the preceding section noted, the existing framework does not adequately address the accountability questions posed by machine decision-making; and the application of IHL to the increasingly complex operational environments of contemporary conflicts, where the distinction between combatants and civilians is often genuinely difficult to draw.

The Bangladesh Air Force's legal training in IHL should not be merely a formal compliance exercise. It should be a genuine engagement with the intellectual and ethical dimensions of these

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contemporary challenges, preparing officers not merely to identify and apply established rules but to reason their way through novel situations that the existing rules do not clearly address. The development of a robust IHL training programme within the Bangladesh Air Force, grounded in the academic literature on contemporary IHL challenges and informed by the operational experience of Bangladesh's peacekeeping personnel, is an institutional priority that this handbook strongly advocates.

42.2 The Rules of Engagement: Legal Framework, Constitutional Basis, and Reform Needs

The rules of engagement (ROE) that govern the conduct of Bangladesh Air Force personnel in operational situations are among the most practically important and most legally complex documents in the Bangladesh Air Force's legal framework. ROE translate the abstract principles of international humanitarian law, the Constitutional framework for the use of force, and the operational guidance of the military command into specific authorisations and prohibitions applicable to the decisions that individual air crew and commanders must make in the operational environment.

The legal framework governing the development and application of ROE in the Bangladesh Air Force has several dimensions. At the constitutional level, ROE must be consistent with the constitutional framework governing the use of force by the armed forces, including the constitutional authority required for offensive military operations and the constitutional principles governing the fundamental rights of persons affected by military action. At the international law level, ROE must reflect the applicable provisions of IHL, including the principles of distinction, proportionality, and military necessity, and must be consistent with any specific legal obligations arising from the UN Security Council mandates or bilateral agreements governing the specific operation in which Bangladesh Air Force personnel are engaged.

At the operational level, ROE must be clear, accessible, and practically workable in the operational environment. ROE that are so complex that they cannot be applied in the time available for decision-making in an operational situation, or so restrictive that they prevent the effective conduct of legitimate military operations, are operationally counterproductive as well as being a potential source of individual criminal liability for personnel who deviate from them under operational pressure. The development of ROE that strike the right balance between legal compliance and operational effectiveness is one of the most demanding challenges of military legal practice.

The process by which ROE are developed, reviewed, and approved within the Bangladesh Air Force requires clarification in the formal legal framework. The involvement of Air Force Judge Advocates in the ROE development process, the mechanisms for reviewing ROE for compliance with constitutional and international law principles, the procedures for issuing ROE cards to operational personnel and ensuring their understanding, and the framework for after-action review of ROE compliance in completed operations all deserve formal legal specification that the current framework does not fully provide.

42.3 UN Peacekeeping Law: Bangladesh's Unique Position and the Legal Challenges of 2026

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Bangladesh's position as one of the world's largest contributors of military personnel to UN peacekeeping operations, currently the third largest by number of personnel, gives UN peacekeeping law a distinctive significance in the Bangladesh Air Force's legal framework. Bangladesh Air Force personnel participate in peacekeeping aviation operations, including helicopter operations that provide mobility, casualty evacuation, and logistical support to peacekeeping missions, and the legal framework governing their conduct must address the specific requirements of the UN peacekeeping legal framework as well as the general framework of IHL.

The legal framework governing UN peacekeeping operations is a complex blend of UN Security Council mandates, Status of Forces Agreements (SOFAs) negotiated between the UN and host countries, Memoranda of Understanding between the UN and troop-contributing countries (including Bangladesh), the Secretary-General's Bulletin on observance by UN forces of international humanitarian law, the UN peacekeeping regulations and standing operating procedures, and the national law of troop-contributing countries.

The specific legal challenges that Bangladesh Air Force personnel face in UN peacekeeping contexts include the question of command authority: UN peacekeeping forces operate under operational control of the UN mission force commander, but remain under the administrative authority and national command of their troop-contributing country. The interaction between these dual command authorities in the event of a conflict between UN mission directives and national command guidance is a legally complex situation for which the Bangladesh Air Force's legal framework should provide clear guidance.

The financial dimensions of UN peacekeeping service have been addressed in Part Nine of this handbook. The legal dimensions specific to the Bangladesh Air Force's aviation contribution to peacekeeping operations include the maintenance of airworthiness standards for aircraft deployed on peacekeeping missions, the liability framework applicable when Bangladesh Air Force helicopters are involved in accidents during peacekeeping operations, and the rules governing the use of force applicable to Bangladesh Air Force crews engaged in peacekeeping aviation operations.

The specific question of liability and compensation when peacekeeping aviation operations cause harm to third parties, whether through accidents or through the use of force, is addressed in a combination of the SOFA applicable to the specific mission, the MOU between the UN and Bangladesh, and the general principles of UN institutional liability. The Bangladesh Air Force's legal framework for managing such claims is not well-documented in the publicly available literature, and the development of a clear legal framework in this area, including clear procedures for the investigation and management of such incidents and clear lines of legal responsibility between the Bangladesh Government, the Bangladesh Air Force, and the UN mission, would be a valuable contribution to the institutional effectiveness of Bangladesh's peacekeeping aviation capability.

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CHAPTER FORTY-THREE: THE FORCES GOAL 2030 REVISION AND THE LEGAL ARCHITECTURE OF INSTITUTIONAL TRANSFORMATION

43.1 Forces Goal 2030: Legal Dimensions of a Military Modernisation Programme

Forces Goal 2030, the military modernisation programme of Bangladesh that was initiated in 2009, revised in 2017, and further revised following the July 2024 Revolution, represents a comprehensive institutional transformation project whose legal dimensions are extensive and not always well-appreciated. The programme covers the restructuring of military organisations, the expansion of force size and capability, the development of indigenous defence technology production, and the acquisition of advanced military equipment. Each of these dimensions has significant legal implications for the Bangladesh Air Force.

The restructuring of the Bangladesh Air Force's organisational framework, as part of the Forces Goal 2030 programme, involves changes to the command structure, the establishment of new units and formations, the definition of new operational roles and missions, and the consequent revision of the regulatory framework that governs the organisation and discipline of those new formations. The legal framework governing the Bangladesh Air Force's organisational structure derives primarily from the Air Force Act and the regulations made thereunder, and significant structural changes may require legislative amendment or at minimum the issuance of new regulations by the appropriate authority.

The expansion of the Bangladesh Air Force's physical infrastructure, including new bases, maintenance facilities, and training installations, involves the exercise of land acquisition powers, construction contract law, environmental law, and the administrative law governing the management of government property, all of which intersect with the Air Force's institutional legal framework in ways that require careful legal management. The environmental law dimension is one that has received insufficient attention in the Bangladesh military legal context: the operation of military air bases creates significant environmental impacts, including noise pollution, fuel and chemical contamination of groundwater, and the disruption of surrounding land use patterns, and the legal framework governing the management of these impacts must comply with Bangladesh's environmental protection legislation and international environmental standards.

The development of indigenous defence technology production capacity, through the Bangladesh Machine Tools Factory and the Bangladesh Ordnance Factory, involves industrial law, intellectual property law, technology transfer law, and the law of public enterprises in ways that have not been systematically addressed in the Bangladesh Air Force's legal framework. As Bangladesh increasingly produces defence equipment domestically, including the possibility of domestically manufactured components for the Eurofighter or other advanced aircraft as part of offset arrangements, the legal framework governing intellectual property ownership, technology licensing, quality assurance, and product liability for domestically manufactured defence equipment becomes directly relevant.

43.2 Defence Offsets and Technology Transfer: Legal Framework for Industrial Policy

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The major procurement decisions that the Bangladesh Air Force is making in 2025-2026, most prominently the Eurofighter Typhoon LOI and the Japan-Bangladesh defence technology agreement, typically involve offset obligations that require the supplying party to make certain investments or undertake certain activities in Bangladesh in exchange for the major defence contract. Offset arrangements, which are common in large-scale defence procurement by developing states, serve as a mechanism for capturing some of the economic and technological benefit of defence expenditure within the national economy, but they also create complex legal obligations that must be managed within the appropriate legal framework.

The legal framework governing defence offset arrangements in Bangladesh is not clearly established in primary legislation. The principles applicable to offset negotiations and contract management are derived from general contract law, trade law, and the specific regulations governing defence procurement, but a comprehensive statutory framework for offset obligations and their enforcement does not exist. The development of such a framework, establishing clear rules for the definition and valuation of offset obligations, the timeframes for their fulfillment, the monitoring and verification mechanisms applicable to offset commitments, and the remedies available in the event of non-fulfillment, is an institutional legal priority that the Bangladesh Air Force's legal advisers should advocate.

Technology transfer law, which governs the conditions under which advanced military technology is transferred from foreign suppliers to Bangladesh, is a dimension of offset and procurement law that has specific constitutional and national security dimensions. The intellectual property protections required by supplier states, the end-user obligations that restrict what Bangladesh can do with the transferred technology, and the potential restrictions on Bangladesh's freedom to share the transferred technology with third parties, whether through further export or through bilateral defence cooperation with other states, all create obligations that must be managed within a legal framework that is currently underdeveloped.

43.3 The Boeing $3.7 Billion Aircraft Deal: Legal Dimensions of the Largest Procurement in Bangladesh Air Force History

Reports from early 2026 indicate that Bangladesh is moving to sign a $3.7 billion aircraft deal with Boeing, described in the available reporting as the largest defence procurement deal in Bangladesh's history. If confirmed and concluded, this deal would represent a transformative development not only in Bangladesh Air Force capability but in the legal and institutional architecture of the force's relationship with the United States defence industry and, implicitly, with the United States Government and its export control framework.

A Boeing aircraft procurement of this magnitude would be subject to the United States' Foreign Military Sales (FMS) process, or alternatively to a Direct Commercial Sales (DCS) arrangement governed by the Arms Export Control Act (AECA). The FMS process involves the United States Government as an intermediary in the procurement, with the Bangladesh Government contracting with the US Government rather than directly with Boeing, and with the US Government taking responsibility for the contractual relationship with the manufacturer. The DCS process involves a direct contractual relationship between the Bangladesh Government and

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Boeing, governed by a commercial contract but subject to the export licence requirements of the AECA and the International Traffic in Arms Regulations (ITAR).

The legal implications of these alternative procurement structures for the Bangladesh Air Force are significant. The FMS structure provides certain advantages, including the backing of the US Government's contractual relationship with the manufacturer and the availability of the FMS logistics support network, but it also creates a degree of US governmental oversight of the procurement and the subsequent operation of the aircraft that a sovereign state may find constraining. The DCS structure provides greater contractual autonomy but may involve more complex legal risk management in relation to the supplier.

For Bangladesh Air Force law, the conclusion of a major aircraft procurement with Boeing would create a set of ongoing legal obligations and operational constraints arising from ITAR that would affect the Bangladesh Air Force's freedom of action in relation to the procured aircraft in ways that no previous procurement agreement has created. ITAR imposes restrictions on the modification, transfer, and operational use of US-origin military equipment that are enforced through the threat of exclusion from further US military sales, and these restrictions must be built into the Bangladesh Air Force's operational legal framework in a way that ensures compliance without undermining operational effectiveness.

CHAPTER FORTY-FOUR: SECURITY SECTOR REFORM AND THE LAW OF INSTITUTIONAL ACCOUNTABILITY

44.1 The Security Sector Reform Agenda: Human Rights Watch, the Interim Government, and the Institutional Response

The Human Rights Watch report of January 2025, "After the Monsoon Revolution: A Roadmap to Lasting Security Sector Reform in Bangladesh," represents the most comprehensive external assessment of the security sector reform challenge in post-revolutionary Bangladesh, and its analysis of the Bangladesh Air Force's institutional context, while not focused specifically on the Air Force, has important implications for the reform of Bangladesh Air Force law.

The report documents the systematic role of Bangladesh's security forces, including the police, the Rapid Action Battalion (RAB), and intelligence agencies, as instruments of political repression under the Hasina government, and identifies the structural features of the existing institutional framework that enable this role. The key structural features identified include political interference in the leadership appointments of security institutions, the absence of effective independent oversight mechanisms, the inadequacy of accountability for human rights violations by security personnel, and the institutional culture of impunity that sustained and perpetuated abusive practices.

While the Bangladesh Air Force is not specifically identified as an institution engaged in systematic human rights violations in the same way as the police or RAB, the structural issues identified by Human Rights Watch apply in principle to the Air Force as well. The existing

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institutional framework of the Bangladesh Air Force, as Parts Seven and Eight of this handbook have documented, concentrates significant power in the commanding officer hierarchy, provides limited independent oversight of the exercise of that power, and has not always provided effective accountability for abuses of institutional authority. The security sector reform agenda that Human Rights Watch advocates has implications for Bangladesh Air Force law that go beyond the specific institutions that were most prominently involved in the repression of the July 2024 protests.

The interim government's decision to establish ten reform commissions addressing different aspects of the institutional framework of Bangladesh governance, including commissions on the judiciary, the constitution, public administration, police, anti-corruption, elections, media, health, labour rights, and women's rights, reflects a comprehensive approach to institutional reform that creates a favourable environment for the kind of legal reform of the Bangladesh Air Force's institutional framework that this handbook has been advocating throughout. The Bangladesh Air Force's legal community should engage actively with the reform commissions' recommendations, contributing the institutional expertise necessary to ensure that reforms affecting the armed forces are grounded in a realistic understanding of the operational requirements of military service and the specific legal framework within which the armed forces function.

The proposed rebranding of the RAB as the Special Intervention Force (SIF), reported in early 2026, reflects the reform agenda's attention to institutional culture and identity, recognising that an institution with a severely compromised reputation cannot simply be rehabilitated by changing its operational practices without also addressing the institutional identity that those practices have shaped. For the Bangladesh Air Force, the analogous challenge is not one of institutional rebranding but of ensuring that the reform of the institutional legal framework is accompanied by genuine cultural change within the institution, so that the formal legal protections and procedural requirements that reform introduces are genuinely internalised as institutional values rather than merely complied with as formal obligations.

44.2 The Depoliticisation Imperative: Legal Mechanisms for Ensuring Armed Forces Neutrality

The BNP's electoral manifesto for the 2026 election, as reported in February 2026, places the depoliticisation of the armed forces as a central pillar of its defence policy agenda, emphasising that Bangladesh's military must remain above political controversy, preserving its institutional dignity and professional integrity. This policy commitment, which echoes similar commitments from the NCP and other political parties, reflects a broad political consensus that the politicisation of the armed forces during the Hasina government period, including the use of military-adjacent security forces as instruments of political repression, represents a model that cannot be sustained in a genuinely democratic Bangladesh.

The legal mechanisms available for ensuring the political neutrality of the armed forces are multiple and must operate at several institutional levels simultaneously. At the constitutional level, the explicit statement in the Constitution that the armed forces serve the constitutional order rather than any particular government or political party, and that the use of military force against the civilian population in support of any political faction is a constitutional crime,

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provides the highest-level normative foundation for armed forces neutrality. The existing Constitution of Bangladesh contains provisions in this direction, but the Constitution Reform Commission's recommendations would strengthen and clarify them.

At the legislative level, the Air Force Act and the regulations made thereunder should include explicit provisions prohibiting the use of Air Force authority, resources, or personnel for the furtherance of partisan political purposes, and should establish clear accountability mechanisms for any breach of this prohibition. The existing Act contains provisions relating to the proper exercise of command authority, but it does not explicitly address the political neutrality dimension in terms that are adequate to the post-revolutionary political context.

At the institutional level, the depoliticisation of the armed forces requires the development of a professional military culture in which political neutrality is understood not merely as a legal obligation but as a core professional value, indispensable to the constitutional legitimacy and institutional integrity of the armed forces. The professional military education system of the Bangladesh Air Force, including the Air Force Academy and the subsequent career training programmes, must address this value explicitly and consistently, preparing officers not just for the technical challenges of air force service but for the constitutional and political dimensions of serving a democratic state that has recently experienced the abuse of military and security power for partisan political purposes.

The particular form of politicisation that the Bangladesh Air Force must guard against is not the overt military coup but the subtler form of political contamination that occurs when officers adjust their professional assessments, their personnel decisions, or their operational planning to align with the perceived preferences of the political leadership. This subtler form of politicisation is difficult to detect and even harder to prosecute under the existing legal framework, but it is just as corrosive of constitutional integrity as the more overt forms. The development of institutional mechanisms for detecting and addressing this subtler form of politicisation, including robust protection for officers who report political pressure on professional decisions, is an important component of the depoliticisation reform agenda.

CHAPTER FORTY-FIVE: THE JURISPRUDENCE OF THE FUTURE: THEORY, PHILOSOPHY, AND THE LONG VIEW

45.1 The Philosophy of Legal Transformation in Military Institutions: Lessons from Comparative History

The reform of military law in any jurisdiction is a slow, contested, and frequently disappointing process. The theoretical literature on legal change in total institutions, drawing on Erving Goffman's sociological analysis of total institutions and Michel Foucault's analysis of disciplinary power, suggests that institutions whose authority is grounded in a distinctive form of power over the persons they contain are peculiarly resistant to legal change that limits or challenges that power. Military institutions, as perhaps the paradigmatic total institution in Goffman's sense, share this characteristic with prisons, hospitals, and monasteries, and the

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history of military justice reform in democratic states confirms that legislative reform is often insufficient on its own to change the lived reality of military institutional life.

The lesson of comparative military justice reform history, most thoroughly examined in the American context but applicable to Bangladesh, is that legal reform succeeds when it is accompanied by three reinforcing conditions. The first condition is external political pressure, typically generated by high-profile cases of institutional failure or abuse that attract public attention and generate demands for reform from outside the institution. The July 2024 Revolution in Bangladesh, and the subsequent reform commissions, represent exactly the kind of external political pressure that can drive genuine institutional reform rather than merely formal legal change.

The second condition is internal reform champions, officers and civilian lawyers within the institution who understand the need for change, have the intellectual framework to articulate it persuasively, and have the institutional standing to advocate for it effectively within the military hierarchy. The Bangladesh Air Force has produced officers of extraordinary professional calibre throughout its history, and the development of a cadre of officers who combine operational excellence with genuine constitutional and legal sophistication is both possible and essential for the reform agenda to succeed. This handbook is, in part, an attempt to contribute to the intellectual formation of such a cadre.

The third condition is an adequate institutional framework for the implementation and monitoring of reform, including independent oversight mechanisms that can detect when formal legal changes are not being implemented in practice and that have the authority to require correction. The establishment of an independent military ombudsman or inspector general function, recommended in Part Eight and Part Nine of this handbook, is the single most important institutional mechanism for ensuring that legal reform translates into genuine change in the lived experience of Bangladesh Air Force personnel.

45.2 Natural Law, Positivism, and the Foundations of Military Legal Obligation in a Democratic State

The jurisprudential foundations of military law, examined briefly in Part One and revisited at various points throughout this handbook, deserve a final synthetic treatment in this concluding Part. The central jurisprudential question is what gives military law its obligatory force, that is, what is the source of the legal and moral obligation that binds air force officers and airmen to comply with the legal framework within which they serve?

The legal positivist tradition, associated most influentially with H.L.A. Hart's concept of law, holds that military law, like any law, derives its obligatory force from the fact of its recognition by the rule of recognition of the legal system of which it forms a part, specifically the Bangladesh Constitution and the legislation enacted under it. On this view, the Bangladesh Air Force Act binds those subject to it not because it embodies any particular moral values but because it is validly enacted law recognised by the legal system's primary rule of recognition. The obligation to comply with military law is, on this positivist account, fundamentally a legal obligation grounded in the authority of the state.

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The natural law tradition, associated in its classical form with Aquinas and in its contemporary form with Lon Fuller and Ronald Dworkin, holds that law is not merely a social fact but a moral achievement, and that laws that fundamentally violate moral principles lose their obligatory force even if they meet the formal criteria for legal validity. Applied to military law, the natural law tradition suggests that the obligation of Bangladesh Air Force personnel to comply with the Air Force Act is conditional on that Act meeting certain minimum standards of moral acceptability, and that provisions of the Act that are fundamentally unjust do not generate genuine legal obligations.

This natural law claim is not merely theoretical. It connects directly to the historical analysis of Bangladesh Air Force law in Parts One and Two, which showed that the Bengali officers who joined the liberation movement in 1971 were making precisely a natural law claim when they chose loyalty to their people over loyalty to a legal order that was perpetrating what would later be recognised as genocide. Their decision was legally indefensible on positivist grounds but morally defensible and historically vindicated, and the founding moment of the Bangladesh Air Force embodies the natural law insight that there are moral limits to legal obligation.

The proceduralist tradition, most closely associated with John Rawls' political philosophy and with the legal philosophy of Juergen Habermas, offers a third account of the foundations of legal obligation that is particularly relevant to a reformed Bangladesh Air Force law. On the proceduralist view, the obligatory force of legal norms derives not from their conformity to antecedent moral principles but from their having been produced through fair procedures of legal deliberation and democratic decision-making in which all affected parties had an adequate opportunity to participate. Applied to Bangladesh Air Force law, this framework suggests that the obligation of service personnel to comply with the legal framework is conditioned on that framework having been produced through legitimate democratic procedures and subject to meaningful constitutional review, and that reforms to the legal framework are legitimate when they are produced through procedures that are themselves fair and inclusive.

The practical implications of this proceduralist account are significant for the current reform moment in Bangladesh. The constitutional reform process initiated after July 2024, and the parliamentary discussions of March 2026 on the Constitution Reform Council, represent an attempt to ground the reformed constitutional and legal framework in a procedure of deliberation that is more inclusive, more transparent, and more democratically accountable than the processes that produced the constitutional framework it replaces. The legitimacy of the reformed Bangladesh Air Force legal framework will depend in part on whether it is produced through a process that meets this proceduralist standard.

45.3 Legal Pluralism and the Bangladesh Air Force: Negotiating Multiple Legal Frameworks

One of the most significant features of the legal landscape within which the Bangladesh Air Force operates, which has been noted at various points throughout this handbook but deserves systematic treatment in this final synthetic chapter, is the legal pluralism of that landscape. Bangladesh Air Force personnel operate simultaneously within multiple overlapping legal frameworks: the Air Force Act and its subsidiary legislation; the Bangladesh Constitution; the

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general law of Bangladesh, including the Penal Code, the Evidence Act, and the administrative law framework; international humanitarian law; the laws of the host states of UN peacekeeping operations; the international law of defence procurement and technology transfer; and the emerging international frameworks governing cyber operations, autonomous weapons, and the use of force in new operational domains.

The theory of legal pluralism, developed by anthropologist Sally Falk Moore and subsequently applied to the analysis of complex institutional settings by legal theorists including John Griffiths, holds that in many social contexts multiple legal orders coexist and interact, and that understanding how law operates requires analysing the interactions between these multiple frameworks rather than treating a single legal system as the exclusive source of applicable norms. Applied to Bangladesh Air Force law, this framework captures the genuine complexity of the legal environment within which Air Force personnel operate and the genuine difficulty of developing legal guidance that is consistent across all the applicable frameworks simultaneously.

The legal pluralism of the Bangladesh Air Force's operational environment has practical implications for legal education and training. Officers must understand not only the Air Force Act and its subsidiary legislation but the constitutional framework, the international humanitarian law framework, the procurement law framework, and the emerging frameworks for new operational domains. The development of a Bangladesh Air Force legal education programme that is genuinely adequate to this multi-framework reality is one of the most important institutional priorities for the Bangladesh Air Force's legal community in the coming decade.

45.4 The Philosopher-Officer: Intellectual Formation and the Practice of Constitutional Military Service

This handbook has, throughout its ten Parts, been written with the conviction that the Bangladesh Air Force officer who understands the law deeply, who has engaged with the philosophical foundations of military authority and military obligation, who has thought carefully about the historical forces that have shaped the institutional framework within which she or he serves, and who has developed the intellectual tools to navigate the genuinely difficult questions that arise in the practice of military law, is a better officer, a more effective commander, and a more valuable servant of the constitutional order than the officer who merely knows the rules and applies them without reflection.

This conviction has ancient roots in the tradition of the warrior-philosopher, which includes figures as diverse as the Roman Emperor Marcus Aurelius, who wrote the Meditations while on military campaign, the samurai scholar Miyamoto Musashi, whose Book of Five Rings is simultaneously a manual of swordsmanship and a treatise on strategy and philosophy, and the Prussian military theorist Carl von Clausewitz, whose On War transformed the theoretical understanding of military force by applying rigorous philosophical analysis to the nature of war. In more recent times, the development of the American tradition of military intellectualism, represented by officers like Alfred Thayer Mahan, John Boyd, and David Petraeus, all of whom combined distinguished operational careers with genuine intellectual contributions to the theory of military strategy, demonstrates that intellectual depth and operational effectiveness are complementary rather than competing qualities.

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For the Bangladesh Air Force, the cultivation of a tradition of military intellectualism that includes genuine engagement with the philosophical and jurisprudential dimensions of military law is both possible and necessary. The officers of the Bangladesh Air Force have, throughout the force's history, demonstrated remarkable qualities of courage, dedication, and professional skill. The challenge for the coming generation is to add to these qualities the intellectual formation necessary to navigate the increasingly complex legal, constitutional, and ethical environment within which the Bangladesh Air Force will operate in the twenty-first century.

The philosopher-officer is not an idealist who applies abstract principles without regard to operational reality. She or he is a practical thinker who understands that the principles of constitutional governance, the rules of international humanitarian law, and the standards of procedural justice applicable to military discipline are not obstacles to effective military operations but the foundations of the institutional legitimacy and professional credibility that make those operations possible. The Bangladesh Air Force that operates within a genuine rule of law framework, that treats its personnel with constitutional respect, that conducts its procurement with integrity, and that carries its international obligations with fidelity, is a more effective instrument of national security than an air force that sacrifices these values for short-term institutional convenience.

CHAPTER FORTY-SIX: THE COMPREHENSIVE REFORM VISION: A BLUEPRINT FOR THE NEXT GENERATION OF BANGLADESH AIR FORCE LAW

46.1 The Legislative Reform Agenda: Priority Statutes and Constitutional Amendments

The legislative reform agenda for Bangladesh Air Force law, assembled from the analysis of all ten Parts of this handbook, is extensive but manageable, provided it is approached systematically and with the political commitment necessary to see it through. The following legislative priorities, listed in order of urgency, represent the framework for a ten-year legislative reform programme that would transform the Bangladesh Air Force's legal framework from its colonial inheritance into a genuinely twenty-first century institution grounded in constitutional values and international best practice.

The first and most urgent legislative priority is the comprehensive amendment of the Air Force Act of 1953 to modernise its structure, update its language, incorporate constitutional rights protections for accused persons, establish independent prosecution for serious offences, create a statutory framework for military investigations, and codify the service conditions entitlements of air force personnel. This comprehensive amendment should be the product of a Law Commission review process involving the participation of the Bangladesh Air Force's legal community, civil society representatives, and comparative military law experts from the academic community.

The second legislative priority is the enactment of a dedicated Defence Procurement Act that establishes the legal framework for all major Bangladesh military procurement decisions, including mandatory parliamentary approval for acquisitions above a specified financial threshold, conflict of interest management requirements applicable to procurement officials,

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transparency requirements for evaluation criteria and award decisions, offset obligation management provisions, and accountability mechanisms for procurement outcomes. This legislation would transform defence procurement from an area governed primarily by executive discretion into a domain of established legal principle subject to effective democratic oversight.

The third legislative priority is the enactment of a Military Service Conditions Act that codifies the pay, allowances, accommodation, medical care, leave, pension, and post-service entitlement framework for Bangladesh Air Force personnel, provides legally enforceable standards for each category of entitlement, and establishes clear and accessible appeal mechanisms for service members who believe their entitlements have been denied. This legislation would transform service conditions from an area of administrative discretion into a domain of legal rights that can be enforced by individual service members in the appropriate forums.

The fourth legislative priority is the enactment of a Bangladesh Military Justice Reform Act that introduces independent military prosecution for serious offences, strengthens the procedural protections applicable to summary proceedings, establishes an independent military appellate court with genuine judicial authority, and creates a transparent annual reporting requirement for the operation of the military justice system. This legislation, modelled on the reforms undertaken in the United States through successive National Defense Authorization Acts and in Canada through the Judge Advocate General's reform programme, would address the most significant structural deficiencies in the Bangladesh Air Force's military justice framework.

The fifth legislative priority is the ratification by Bangladesh of the Rome Statute of the International Criminal Court, which would bring Bangladesh's legal framework for the most serious violations of international humanitarian law into alignment with the international accountability framework and would create an additional deterrent against the most serious abuses of military power.

46.2 The Regulatory Reform Agenda: Priority Regulations and Administrative Instructions

The regulatory reform agenda complements the legislative agenda and addresses the specific operational details that primary legislation necessarily leaves to subordinate regulation. The priority regulatory reforms for the Bangladesh Air Force include the following.

The reform of the Air Force Regulations to incorporate explicit constitutional compliance requirements in the exercise of all disciplinary and administrative powers, providing that every exercise of command authority must be consistent with the constitutional principles of equality, due process, proportionality, and dignity, and that the failure to comply with these requirements renders the relevant exercise of authority void and subject to legal challenge.

The development of comprehensive Aviation Safety Regulations for the Bangladesh Air Force, establishing a statutory framework for the Bangladesh Air Force's aviation safety management system, the mandatory reporting of aviation safety occurrences, the protections applicable to persons who report safety concerns in good faith, and the separation between safety investigation and disciplinary investigation functions. These regulations should be informed by ICAO Doc 9859 and adapted to the specific requirements of military aviation in Bangladesh.

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The development of new Procurement Regulations establishing the procedures for the evaluation of defence procurement proposals, the management of conflicts of interest in the procurement process, the negotiation and management of offset obligations, the compliance management framework for international technology transfer agreements including ITAR and equivalent export control regimes, and the anti-corruption compliance requirements applicable to all procurement officials.

The reform of the Pension Regulations to eliminate constitutionally suspect provisions, to ensure adequate family pension arrangements that comply with contemporary constitutional standards of gender equality, to extend appropriate entitlements to reserve personnel activated for service, and to establish a clear framework for disability pension attribution that presumes attribution to service in cases of doubt.

The development of Rules of Engagement Review Regulations establishing the formal process for the development, legal review, approval, and periodic review of Bangladesh Air Force rules of engagement, the involvement of the Judge Advocate General's office in the ROE development process, and the procedures for reviewing ROE compliance in after-action assessments following completed operations.

46.3 The Institutional Reform Agenda: Culture, Education, and Governance

The institutional reform agenda for Bangladesh Air Force law addresses the organisational and cultural dimensions of reform that legislation and regulation alone cannot achieve. The principal elements of this agenda are as follows.

The establishment of an independent military ombudsman for the Bangladesh Air Force, with jurisdiction to receive and investigate complaints from service personnel and their families about the exercise of administrative and disciplinary authority, to conduct own-motion investigations into systemic issues, to report annually to Parliament on the state of the military justice and service conditions framework, and to make binding recommendations for the correction of identified deficiencies.

The strengthening of the Judge Advocate General's branch of the Bangladesh Air Force, including the recruitment and training of additional legally qualified officers, the development of a structured career path for Air Force legal officers, the establishment of minimum standards of legal qualification for appointment to judge advocate positions, and the development of a research and publications programme that contributes to the development of Bangladesh military law jurisprudence.

The comprehensive reform of the professional military education curriculum of the Bangladesh Air Force, integrating substantive modules on constitutional law, military administrative law, international humanitarian law, the law of armed conflict, aviation safety law, procurement law, and the philosophical foundations of military legal obligation into the preparation of all officers for commissioned service and into the continuing professional development of officers throughout their careers.

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The establishment of a Bangladesh Air Force Legal Research Centre, staffed by qualified legal scholars and practitioners, whose mission is to monitor legal developments relevant to Bangladesh Air Force law in domestic and international jurisdictions, to produce research publications contributing to the development of Bangladesh military jurisprudence, to advise the Air Force headquarters on emerging legal issues, and to develop training materials for the professional military education programme.

The development of a formal annual military justice report for the Bangladesh Air Force, modelled on the annual reports of the Judge Advocate General's offices of the United States, the United Kingdom, and Canada, providing aggregate statistics on the operation of the military justice system, identifying patterns of concern, reporting on the implementation of reform recommendations, and contributing to the democratic accountability of the military justice process.

46.4 The International Engagement Agenda: Building Bangladesh Air Force Legal Capability in the Global Context

Bangladesh Air Force law does not exist in isolation from the international legal community. The development of Bangladesh military jurisprudence requires sustained engagement with the comparative military law scholarship, with the international humanitarian law community, with the UN peacekeeping legal framework, and with the legal frameworks of the defence partner nations with which Bangladesh is developing closer relationships through the Eurofighter LOI, the Japan technology agreement, and the prospective Boeing deal.

The international engagement agenda for Bangladesh Air Force law includes the following elements: participation by Bangladesh Air Force legal officers in international military law training programmes, including those conducted by the US Judge Advocate General's Legal Center and School, the UK Defence Academy, and the NATO School; engagement with the work of the International Committee of the Red Cross on the application of international humanitarian law to emerging technologies, including autonomous weapons and cyber operations; participation in the UN's ongoing work on peacekeeping law and the Secretary-General's guidelines on the conduct of UN peacekeeping personnel; and the development of bilateral legal cooperation arrangements with defence partner nations that include provisions for the exchange of legal expertise and the development of shared frameworks for the management of legal issues arising from combined operations and joint procurement.

The aspiration of this international engagement agenda is to position Bangladesh as not merely a consumer of international military legal frameworks but a contributor to their development, bringing to the international military law community the distinctive perspective of a non-aligned state with extensive peacekeeping experience, a democratic constitutional tradition, and a serious commitment to the rule of law in military affairs.

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CHAPTER FORTY-SEVEN: FINAL SYNTHESIS AND CONCLUSION: THE ENDURING SIGNIFICANCE OF LEGAL COMMITMENT IN THE BANGLADESH AIR FORCE

47.1 The Argument of This Handbook: A Summary and Final Statement

This handbook has proceeded, across ten Parts and forty-seven chapters, from the philosophical foundations of military law through its historical origins, constitutional framework, substantive provisions, comparative dimensions, and emerging challenges, to arrive at this final moment of synthesis. It is worth pausing to state clearly what the argument of the whole has been.

The Bangladesh Air Force law, properly understood, is not merely a collection of rules about discipline, courts martial, and service conditions. It is the legal expression of the Bangladesh Air Force's commitment to constitutional governance, to the rule of law, and to the dignity and rights of the persons who serve within it. This legal expression is imperfect, as any product of human institutional effort inevitably is, but it contains within it the resources for progressive improvement, and the direction of that improvement is clearly indicated by the constitutional values of the Republic of Bangladesh, the international human rights framework, and the best comparative practice of democratic military establishments worldwide.

The central jurisprudential insight that has animated this handbook is that the law of the Bangladesh Air Force is not external to the institution, imposed from outside by a legislature or a court that does not understand military life. It is the internal expression of the institution's own deepest commitments, including the commitment to serve the constitutional order rather than any particular political faction, the commitment to treat every person within the institution with justice and dignity, the commitment to conduct military operations in accordance with the applicable rules of international law, and the commitment to be accountable to the democratic society it exists to protect. When the law falls short of these commitments, the legal framework itself provides the resources for demanding improvement, and the legal scholars and practitioners who study and apply Bangladesh Air Force law are themselves agents of the institutional betterment that those commitments require.

47.2 The Challenge of the Present Moment: The Bangladesh Air Force in 2026

The Bangladesh Air Force of April 2026 stands at a moment of extraordinary institutional possibility. The political transformation of 2024 has created an environment in which genuine institutional reform is both necessary and achievable. The modernisation agenda represented by the Eurofighter Typhoon LOI, the Japan technology agreement, and the prospective Boeing deal is placing the Bangladesh Air Force at the frontier of modern airpower capability and demanding a legal framework adequate to that frontier. The constitutional reform process is creating the possibility of a genuinely reformed constitutional order within which Bangladesh Air Force law can develop on more robust and principled foundations.

The challenges of this moment are equally significant. The transition to a new constitutional order creates uncertainty, and uncertainty creates both opportunity and risk. The introduction of advanced Western military technology creates legal obligations and compliance burdens that the

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existing institutional framework is not fully equipped to manage. The continuing evolution of international humanitarian law, the emergence of new operational domains in cyber and space, and the proliferation of autonomous weapons systems create legal challenges for which the existing framework provides inadequate guidance. The cultural transformation necessary to translate legislative reform into genuine institutional change requires sustained, patient, and determined effort over a generation, not merely the passage of good legislation.

The response to these challenges that this handbook advocates is the response of a genuinely constitutionally committed institution: engage with the law honestly and intellectually, understand the principles that underlie it and the history that has shaped it, advocate for its improvement through legitimate legal and democratic means, and apply it with fidelity and fairness in every exercise of institutional authority. This is not the response of an institution that treats law as an obstacle to be managed or circumvented. It is the response of an institution that understands that law, properly understood and faithfully applied, is one of the most powerful instruments of institutional excellence and public legitimacy that any organisation can possess.

47.3 A Letter to the Officers of the Bangladesh Air Force

The conventions of legal scholarship do not customarily include personal epistolary addresses to the intended readership. But this handbook has been written with a specific readership in mind, the officers, judge advocates, legal scholars, and civilian practitioners who will carry the legal work of the Bangladesh Air Force forward in the years and decades ahead, and it seems right to speak to them directly in these final pages.

You serve in an institution with a remarkable history, a history of courage, of founding sacrifice, of professional excellence in demanding conditions, and of contribution to international peace that has brought honour to Bangladesh and its people. That history gives you the institutional inheritance from which your work proceeds. But history is not destiny. The institutions you inherit are not finished products but living communities of practice, shaped continuously by the decisions, the commitments, and the daily choices of the people within them.

The law is your instrument. Learn it deeply, not merely its rules but its principles, not merely its current provisions but its historical roots and its future possibilities. Engage with the philosophical traditions that have shaped it, from the natural law tradition of Aquinas and its modern descendants, to the legal positivism of Austin and Hart, to the proceduralist liberalism of Rawls and Habermas, to the critical traditions that have challenged all of these from the perspectives of the marginalised and the subordinated. These are not merely academic exercises. They are the intellectual tools you will need when the existing rules do not clearly address the situation you face, when institutional pressure pushes in one direction and constitutional principle in another, when the decision you must make will have consequences for the rights and dignity of a person who has entrusted their case to your professional honesty.

Apply the law with fidelity and courage. Fidelity means applying the law as it is, even when its application is inconvenient or unwelcome to institutional authority. Courage means advocating for the law's improvement when it falls short of what justice requires, even when that advocacy is unpopular. The Judge Advocate who tells the commanding officer that a proposed course of

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action violates constitutional requirements may not be thanked at the time, but that officer is performing the most essential function of a legal officer in a democratic military institution: holding the institution accountable to the values that give it its legitimacy.

Advocate for reform through the mechanisms that the law provides. The Bangladesh Air Force's legal framework needs substantial development, and that development will not happen by itself. It will happen through the sustained advocacy of officers and lawyers who understand both what the law should be and how legal change occurs in institutional settings. The recommendations of this handbook are a framework, not a final word. Take them as a starting point, test them against your own experience and judgment, improve them where they can be improved, and carry the project of Bangladesh Air Force legal development forward with the same commitment that the founding generation of the Bangladesh Air Force brought to the project of building the force from nothing in the fires of the liberation war.

Finally, remember that the law exists for people, not people for the law. Every provision of the Air Force Act, every regulation, every rule of engagement, every service conditions entitlement, exists ultimately to serve the human beings who are affected by it, the officers and airmen who are tried under the military justice system, the families who depend on the pension and service conditions framework, the civilians who are affected by Air Force operations, and the society that the Bangladesh Air Force exists to protect. When the law serves those people well, honour it. When it fails them, change it. This is the calling of a legal officer in a constitutional democratic military institution, and it is a calling worthy of the finest traditions of the Bangladesh Air Force and of the Republic it serves.

FINAL SYNTHESIS OF THE HANDBOOK

This handbook has examined the law of the Bangladesh Air Force across ten Parts, addressing the philosophical foundations of military law, the historical origins and colonial inheritance of the legal framework, the constitutional architecture within which air force law functions, the theoretical frameworks for understanding military justice systems, the substantive law of military offences and discipline, the law of military courts and trials, the civil-military relations framework, the law of military discipline and administrative action, the law of service conditions and personnel administration, and finally the future of Bangladesh Air Force law in the context of the transformative political, technological, and institutional developments of 2024-2026.

The comprehensive picture that emerges from this examination is of a legal framework that is simultaneously impressive in its coverage and inadequate in its application, principled in its foundations and imperfect in its implementation, historically rooted in a colonial inheritance that it is progressively transcending and constitutionally embedded in a democratic order that is itself in the process of transformation. This picture is not a cause for despair but for engaged, informed, and determined effort. The resources for genuine legal excellence are present in the Bangladesh Air Force's institutional tradition, in its constitutional framework, in the international legal community of which Bangladesh is part, and in the quality of the officers who have dedicated their professional lives to the service of the force and the Republic.

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The pages of this handbook have engaged with questions of philosophy and jurisprudence that might seem remote from the daily concerns of an air force officer navigating the institutional reality of Bangladesh Air Force service. But the conviction underlying every page is that these questions are not remote. They are, in the deepest sense, the questions that every exercise of institutional authority raises and that every fair-minded professional who exercises that authority must be equipped to answer. The Bangladesh Air Force that understands why its law is as it is, what it should become, and what it owes to the people it governs and serves, is an institution capable of the excellence that the Republic of Bangladesh deserves and that the men and women who wear its uniform have earned the right to serve with pride.

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Author's Note

This Part draws on developments through April 2026, including the latest reporting on the Bangladesh Air Force Eurofighter Typhoon LOI signed December 9, 2025, the Bangladesh-Japan defence technology agreement of February 3, 2026, the parliamentary discussions on constitutional reform of March 31, 2026, and the political party manifestos relating to defence and security sector reform published in the first months of 2026. The comparative military law analysis draws on the most recent annual reports of the Judge Advocate General's offices of the United States, United Kingdom, and Canada as available through early 2026.

EDITORIAL NOTE: This concludes the ten-Part handbook on Bangladesh Air Force Law, Jurisprudence and Institutional Discipline. The handbook has addressed, across ten comprehensive Parts, the foundational philosophy and history of Bangladesh Air Force law, the constitutional framework, the military justice system, civil-military relations, the law of discipline and administration, service conditions law, and the emerging challenges and reform vision for the future. It is offered to the officers, legal practitioners, and scholars of the

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Bangladesh Air Force in the conviction that a deep, honest, and philosophically informed understanding of the law that governs an institution is itself a form of service to that institution and to the Republic it exists to protect.

This handbook is dedicated to the Bangladesh Air Force, to the memory of those who founded it in the fires of the liberation war of 1971, and to the generations of officers and airmen who have served it with courage, dedication, and professional excellence. May the law that governs their service be worthy of the sacrifice they bring to it.

This handbook is intended as an educational and scholarly resource. It does not constitute legal advice. Officers seeking guidance on specific legal questions arising in the course of their duties should consult the legally qualified advisers of the Bangladesh Air Force.

End of Part Ten. End of Handbook.

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The handbook is organized in ten parts that build pregressively toward a comprehensive vision of what Bangladesh Air Force law should become: Part One lays the philosophical and historical foundations, tracing military law from the Roman legions through the British colonial inheritance to the liberation war of 1971. Part Two examines the specific offence provisions of the Air Force Act of 1953 with analytical depth and comparative awareness. Part Three addresses the structure and procedure of courts martial and summary proceedings: Part Four explores the rights of accused persons, the constitutional and procedural protections that define the limits of military authority over the individual. Part Five provides a comprehensive analysis of the specific offences created by the Air Force Act, each examined with attention to its elements, philosophical foundations, and reform requirements.

The handbook engages directly with the most significant contemporary developments in Bangladesh military affairs. It analyzes the December 2025 Letter of Intent with Leonardo for the procurement of Eurofighter Typhoon combat aircraft, the largest and most consequential procurement decision in Bangladesh Air Force history. It examines the February 2026 defence technology agreement with Japan and the prospective Boeing 3.7 billion dollar aircraft deal. It addresses the tragic July 2025 aircraft crash at Uttara that killed at least thitty five people including school children and the legal framework for aviation safety and accoun; tability. It engages with the constitutional reform process, the July National Charter, and the parliamentary discussions of March 2026 that will shape the legal environment for a generation.

This handbook is written for multiple audiences simultaneously: It is written for officers of the Bangladesh Air Force who must understand the legal framework within which they exercise command authority and within which they may one day find themselves subject to discipline. It is written for judge advocates.

ABOUT THE AUTHOR

S M Nazmuz Sakib

S M Nazmuz Sakib is an interdisciplinary scholar, researcher and author bridging IT, business analytics, and applied research. He is Fellow of the Scholars Academic and Scientific Society, a Member of IAENG, a lifetime member of BELTA, and a Bangladeshi Arena Grand Master (AGM) recognized by FIDE. His credentials include extensive certifications across AWS, Google/SAS analytics, UX, project management, digital marketing, and finance. Sakib has published several peer-reviewed articles and book chapters with Springer Nature, CRC Press/Taylor& Francis, and IGI Global on various topics.

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